

REDACTED – FOR PUBLIC INSPECTION

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Application by Verizon New England)
Inc., Bell Atlantic Communications,)
Inc. (d/b/a Verizon Long Distance),)
NYNEX Long Distance Company)
(d/b/a Verizon Enterprise Solutions),)
and Verizon Global Networks Inc.,)
For Authorization Under Section 271 of)
The Telecommunications Act of 1996)
To Provide In-Region, InterLATA)
Services in Massachusetts)

CC Docket No. 00-176

REPLY COMMENTS OF THE
MASSACHUSETTS DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Commonwealth of Massachusetts
Department of Telecommunications and Energy

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Dated: November 3, 2000

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I. INTRODUCTION

On October 16, 2000, the Department of Telecommunications and Energy (“Department” or “D.T.E.”) filed its Evaluation (“D.T.E. Evaluation” or “Evaluation”) of Verizon New England, Inc.’s, d/b/a Verizon Massachusetts (“VZ-MA”),¹ compliance with § 271 of the Telecommunications Act of 1996 (“Act”). Our Evaluation recommended, without qualification, that the Federal Communications Commission (“FCC”) grant VZ-MA’s § 271 application. The Department has reviewed all of the comments filed by interested third parties, also filed on October 16, 2000, as well as the evaluation of the United States Department of Justice (“DOJ”), filed on October 27, 2000.² Nothing contained in these comments causes us to reconsider our earlier stated view, that VZ-MA meets the requirements of the § 271 competitive checklist, and that the local market in Massachusetts is irreversibly open to competition.

In these reply comments, we reaffirm our recommendation that VZ-MA be permitted to enter the interLATA market. To the extent that other participants, including the DOJ, reach different conclusions on checklist compliance than the Department does, we ask the FCC to place substantial weight on our conclusions, as the FCC has said it will do when the state

¹ The Department’s use of “Verizon,” as opposed to “VZ-MA,” in these comments refers to the corporate parent of VZ-MA.

² For purposes of our reply comments, references to the “Attorney General” shall be understood to mean the Massachusetts Attorney General. The Department will use “DOJ” when it refers to the U.S. Department of Justice.

commission has directed a rigorous collaborative process that includes the following components, all of which were an integral part of the Department's investigation: (1) an extensive independent third-party test of VZ-MA's operations support systems ("OSS") interfaces, processes and procedures; (2) active participation by Department staff, VZ-MA, and competitive local exchange carriers ("CLECs") in numerous technical sessions that helped to identify and resolve problems and factual disputes; and (3) the development of a comprehensive performance monitoring and enforcement mechanism.³

Consistent with the approach set forth in our Evaluation, the Department will address only those arguments that were raised by participants during our § 271 proceeding. The DOJ sought clarification from the Department on several issues related to digital subscriber line ("xDSL") service addressed in our Evaluation.⁴ We welcome the opportunity to provide additional explanation on these matters in order to allay the DOJ's concerns.

It bears repeating that our review of VZ-MA's § 271 compliance filing, performed in D.T.E. 99-271, was open to any interested participant upon submission of a "letter of participation." On October 16, 2000, the FCC received comments from several carriers that did not participate in D.T.E. 99-271. These carriers include: Network Access Solutions

³ Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York, CC Docket No. 99-295, Memorandum Opinion and Order, FCC 99-404, at ¶ 20 (1999) ("Bell Atlantic New York Order")

⁴ DOJ Evaluation 8-9 n.30.

(“NAS”); OnSite Access Local, L.L.C., (“OnSite Access”); and ICG Telecom Group, Inc.

(“ICG”).⁵ These carriers did not seek to participate in D.T.E. 99-271. In contrast, AT&T Communications of New England, Inc. (“AT&T”), which participated heavily throughout our D.T.E. 99-271 investigation, filed comments on October 16 limited only to two points.

Therefore, beyond the analysis in our Evaluation of AT&T’s issues that were raised in our proceeding, no reply of substance, beneficial to the record, is possible.

II. CONTESTED CHECKLIST ITEMS

A. Checklist Item 1 - Interconnection

1. Trunking

a. Discussion

Winstar Communications, Inc. (“Winstar”) and CompTel submitted comments arguing that VZ-MA fails to satisfy the trunking requirements of checklist item 1. CompTel made numerous allegations regarding VZ-MA’s performance in provisioning interconnection trunks to ICG, including the failure to honor ICG’s forecasts, provision trunks, and install entrance facilities in a timely manner.⁶ Winstar raises numerous issues, all of which have been resolved

⁵ Competitive Telecommunications Association (“CompTel”), which is a participant in our § 271 proceeding, attached an affidavit to its comments from a ICG employee, Theodore X. Washington (“Washington Affidavit”).

⁶ CompTel Comments, Washington Aff. at ¶¶ 6-8.

to the Department's satisfaction and addressed fully in our Evaluation.⁷ In addition, Winstar raised two issues not addressed previously by the Department: Winstar argues that VZ-MA fails to return firm order confirmations ("FOCs") on time;⁸ and that VZ-MA's improper designation of Winstar "hubs" as "points of presence" ("POPs") results in needless delays to Winstar.⁹

In its August supplemental comments, VZ-MA explained clearly that it does not return FOCs for individual trunks but, rather, does so for access service requests.¹⁰ VZ-MA contended that, between January and June 2000, Winstar placed five orders for 110 trunks, and that VZ-MA was late in providing the FOC for only one category 1 order.¹¹ VZ-MA added that its ten business-day standard only applies to the return of FOCs for category 1 trunk orders, and that all other categories have negotiated FOC intervals.¹² VZ-MA reviewed Winstar's orders from January through June, 2000, and provided a summary of its findings in its August supplemental comments. Winstar chose not to contest VZ-MA's findings (i.e., that

⁷ D.T.E. Evaluation at 29.

⁸ Winstar Comments at 4.

⁹ Id. at 6.

¹⁰ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 34 (VZ-MA August Supplemental Checklist Aff.).

¹¹ Id.

¹² Id.

Winstar submitted five not 89 orders) before the Department, nor does it appear that Winstar acknowledges this VZ-MA review in its FCC comments.

b. Conclusions

Neither CompTel nor ICG raised trunking issues during the Department's § 271 investigation, and there is no evidence concerning ICG's complaints in our record. Because ICG did not participate in the Department's § 271 investigation, we have not had an opportunity to fully explore its complaints nor VZ-MA's response to them. Therefore, the Department is unable to address CompTel's and ICG's comments regarding interconnection trunking.

Similarly, Winstar raised its entrance facility assertion (i.e., that VZ-MA improperly designates Winstar's hubs as POPs) for the first time in its FCC comments and, as a result, there is no evidence in the record that would allow the Department, or the FCC, to determine whether VZ-MA acted improperly in designating some Winstar hubs as POPs and requiring Winstar to provide entrance facilities. Therefore, the Department is not able to reply substantively to Winstar's entrance facility argument.

Regarding Winstar's comments on FOC timeliness, VZ-MA's explanation given in August is fully responsive to Winstar's complaint. The Department notes that Winstar's complaint appears to be another manifestation of the miscommunication previously addressed in

our Evaluation,¹³ and the Department reiterates its expectation that VZ-MA and CLECs will work collaboratively to arrive at clear, mutually satisfactory definitions of “order” and “project.”

For the reasons discussed above and in our Evaluation, the Department recommends that the FCC provide little weight to the claims made by Winstar and CompTel. Claims such as these could and should have been raised during the D.T.E. 99-271 investigation, where they would have been explored and, if possible, resolved. Raising them for the first time in the October 16 comment filing, well after the close of a state regulatory commission’s § 271 investigation, is inappropriate and poses problems not only in the instant matter but for all future Bell Operating Company (“BOC”) applications. In summary, we find that VZ-MA has satisfied the trunking requirement of checklist item 1.

2. Collocation

a. Discussion

Commenters dispute three aspects of VZ-MA’s compliance with its collocation obligations under checklist item 1: VZ-MA’s collocation at remote terminal tariff offering; VZ-MA’s charges for collocation power; and VZ-MA’s refusal to allow in-place conversions of virtual to physical collocation.

¹³ D.T.E. Evaluation at 30-31.

i. Collocation at Remote Terminals

Rhythms Links, Inc. (“Rhythms”) states that VZ-MA’s application is final when filed, and that, accordingly, the FCC must evaluate the application in light of VZ-MA’s current remote terminal collocation tariff offering.¹⁴ Rhythms maintains that there is no record to demonstrate that VZ-MA’s collocation at remote terminal offering meets the § 271 obligations since the Department’s decision on VZ-MA’s offering will not be issued until after this § 271 proceeding is complete; thus, Rhythms says, VZ-MA’s application is “fatally deficient.”¹⁵ Covad Communications Company (“Covad”) also argues that VZ-MA’s unbundled subloop arrangements tariff hampers the ability of carriers to provision a variety of advanced services, but that the Department is only conducting a limited investigation into this tariff.¹⁶

Commenters maintain that VZ-MA’s tariff offering does not comply with the UNE Remand Order¹⁷ or VZ-MA’s statutory obligations under § 251(c)(6). First, Rhythms and Covad state that VZ-MA’s offering limits the subloop unbundled network element (“UNE”) to the metallic distribution pairs/facilities at the VZ-MA feeder distribution interface even though

¹⁴ Rhythms Comments at 14-15.

¹⁵ Id. at 10-11.

¹⁶ Covad Comments at 27.

¹⁷ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 99-238 (rel. Nov. 5, 1999) (“UNE Remand Order”).

there is nothing in the UNE Remand Order that allows for such a limitation.¹⁸ Second, Rhythms and the Association for Local Telecommunications Services Coalition (“ALTS”)¹⁹ argue that VZ-MA’s definition of remote terminal equipment enclosures places limitations on the type of enclosures where VZ-MA will allow CLECs to collocate.²⁰ Third, Rhythms contends that VZ-MA’s requirement that CLECs construct a separate “Telecommunications carrier Outside Plant Interconnection Cabinet” at each VZ-MA remote terminal that a CLEC seeks to serve would be prohibitively expensive.²¹

ii. In-Place Conversions

Rhythms and ALTS note that VZ-MA refuses to allow in-place conversions of virtual collocation to physical collocation, but that Verizon allows such conversions in New York.²² Rhythms states that failure to provide these conversions has serious business implications, and that the FCC must address this situation before VZ-MA receives § 271 approval in Massachusetts.²³

¹⁸ Rhythms Comments at 12; Covad Comments at 26.

¹⁹ ALTS filed comments for itself, Digital Broadband Communications (“Digital Broadband”), XO Communications (formerly Nextlink), and DSLnet Communications.

²⁰ Rhythms Comments at 12; ALTS Comments at 17.

²¹ Rhythms Comments at 12-13.

²² Rhythms Comments at 15; ALTS Comments at 14.

²³ Rhythms Comments at 18.

iii. Collocation Power Charges

Rhythms, Covad and ALTS argue that VZ-MA's collocation power charges are excessive.²⁴ By charging CLECs for collocation power based upon the capacity VZ-MA provides, rather than the amount of power requested by the CLECs, the commenters argue that VZ-MA's behavior is anti-competitive and should not be rewarded with § 271 approval.²⁵

b. Conclusions

VZ-MA's unbundled subloop arrangement and collocation at remote terminal tariff offerings are subject to the review and final approval of the Department, and, contrary to Covad's claim, the Department is conducting a full investigation of these two tariffs in D.T.E. 98-57 (Phase I), a proceeding in which both Rhythms and Covad are active participants. Moreover, the Department's investigation of the reasonableness of the terms, conditions and rates of the offerings contained in these tariffs will include a review of all applicable FCC rules. The fact that this investigation is on-going should not prevent approval of VZ-MA's § 271 application.²⁶ VZ-MA is offering, and carriers may avail themselves of, these services

²⁴ Rhythms Comments at 18; Covad Comments at 43; ALTS Comments at 18.

²⁵ Rhythms Comments at 18-20; Covad Comments at 44-46; ALTS Comments at 18-20.

²⁶ See Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas, CC Docket No. 00-65, Memorandum Opinion and Order, FCC 00-238, at ¶¶ 87, 236-238 (2000) ("SBC Texas Order") (concluding that the § 271 process could not function as Congress intended if the FCC adopted a
(continued...)

now, subject to change and true-up based upon the results of the Department's investigation.

Likewise, VZ-MA's refusal to allow in-place conversions of virtual to physical collocation arrangements does not prevent a finding of compliance with checklist item 1. The Department has previously determined that VZ-MA meets its obligation to provide collocation by offering physical and virtual collocation as well as shared cages and cageless collocation under terms, conditions, and rates approved by the Department.²⁷ As correctly noted by the commenters, the Department initially required VZ-MA to allow such conversion, but we stayed our decision pending the completion of the FCC's remand proceedings.²⁸ Once those remand proceedings are complete, the Department will review the issue of in-place conversions in D.T.E. 98-57 (Phase I) in light of the FCC's rules. In the interim, because the FCC's rules on the separation of incumbent local exchange carrier ("ILEC") and CLEC equipment have yet to be promulgated, VZ-MA's prohibition against in-place conversions should not result in a finding of non-compliance with checklist item 1.

Lastly, as to the issue of collocation power charges, the Department previously

²⁶(...continued)

general policy of denying any § 271 application accompanied by unresolved pricing and other intercarrier disputes, and finding that interim rate solutions are sufficient for § 271 purposes "when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to [the FCC's] pricing rules, and provision is made for refunds or true-ups once permanent rates are set.").

²⁷ D.T.E. Evaluation at 35-36.

²⁸ VZ-MA Application, Appdx. K, Vol. 6, Tab 72, at 15 (D.T.E. 98-57-Phase I Order).

addressed the commenters concerns,²⁹ and we will not repeat our conclusions here.³⁰ In sum, the Department affirms its conclusion that the evidence in the record fully supports VZ-MA's compliance with its collocation obligations under checklist item 1.

B. Checklist Item 2 - Unbundled Network Elements

1. Operations Support Systems

a. Commercial Readiness of VZ-MA's OSS

In their comments, various CLECs argue that VZ-MA has not met its obligations with respect to checklist item 2 because VZ-MA's OSS "have not been subjected to a meaningful commercial test."³¹ The Association of Communications Enterprises ("ASCENT"), for example, contends that because VZ-MA has only processed a few thousand UNE-Platform ("UNE-P") orders per month, VZ-MA lacks the "real-world" experience that would confirm that its OSS are available on a nondiscriminatory basis.³²

WorldCom, Inc. ("WorldCom") also contends that VZ-MA's commercial volumes are insufficient to warrant a finding of compliance with the OSS requirements of checklist item 2. Similar to ASCENT, WorldCom points to the volume of UNE-P orders placed in Massachusetts in recent months compared to the UNE-P volumes in New York prior to its

²⁹ See D.T.E. Evaluation at 39-41.

³⁰ Id. at 40.

³¹ ASCENT Comments at 4.

³² Id. at 4.

§ 271 application.³³ WorldCom contends that UNE-P is “the only mode of entry with the potential to provide ubiquitous mass-market service to residential customers in the near term.”³⁴ WorldCom further contends that because only four of the 5,000 UNE-P orders submitted during July 2000 were submitted over the Electronic Data Interchange (“EDI”) interface, which, according to WorldCom, is “the interface of choice for CLECs attempting to provide service at commercial volumes,” VZ-MA’s pre-ordering and ordering interfaces are incapable of providing CLECs with nondiscriminatory access to VZ-MA’s OSS.³⁵ Finally, WorldCom also argues that VZ-MA’s low volume of new installations of UNE-P (as opposed to migrations of customers) disqualifies VZ-MA’s application.³⁶

While the Department agrees with commenters that CLECs’ UNE-P order volumes are not at the same level in Massachusetts as they were in New York at the time of Verizon-New York’s (“VZ-NY”) § 271 application, we disagree with commenters that this fact somehow demonstrates that VZ-MA does not meet its obligations under checklist item 2. First, contrary to WorldCom’s arguments, UNE-P is not the only mode of entry available to CLECs in Massachusetts, nor has the FCC indicated in prior Orders that UNE-P should be the primary mode of entry on which § 271 applications will be judged. Notably, AT&T stated in its

³³ WorldCom Comments at 39, Kwapniewski/Lichtenberg Decl. at ¶ 26.

³⁴ WorldCom Comments at 39.

³⁵ Id.

³⁶ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 27.

comments that it prefers to avoid “relying on facilities provided by the incumbent,” and that its “preferred strategy for entering local markets is through the use of its own facilities.”³⁷

Further, despite WorldCom’s assertions to the contrary, VZ-MA’s OSS have been subjected to commercial volumes across all modes of entry. The data provided by VZ-MA in its application show that VZ-MA’s systems have been subjected to significant commercial activity. Specifically, in the first half of this year, Verizon processed 2.7 million CLEC pre-order transactions between New York and New England -- more than Verizon processed in this region in all of 1999.³⁸ In addition, during the Department’s August 2000 technical sessions, VZ-MA witnesses testified that over 48,000 Local Service Requests (“LSRs”) were processed in Massachusetts during July 2000.³⁹ While UNE-P orders accounted for approximately 5,000 of these LSRs, VZ-MA processed approximately 17,500 resale orders and 25,500 UNE-Loop orders.⁴⁰

We further disagree with WorldCom’s contention that the volume of UNE-P orders submitted over the EDI interface demonstrates VZ-MA’s non-compliance with this checklist

³⁷ AT&T Comments at 9.

³⁸ VZ-MA Application, Appdx. A, Vol. 1, Tab 2, at ¶ 34 (VZ-MA McLean/Wierzbicki Decl.).

³⁹ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4578 (Transcript of Technical Session Held 8/21/00).

⁴⁰ VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4734-4735 (Transcript of Technical Session Held 8/22/00).

item. WorldCom's statement that VZ-MA processed only four EDI orders during July 2000 is wrong. In fact, VZ-MA processed over 3,600 CLEC orders over the EDI interface during that month.⁴¹ Moreover, WorldCom assumes that the EDI interface is the only interface on which VZ-MA's OSS should be judged. VZ-MA does have an obligation to provide competitors with a viable application-to-application interface, an obligation that we have found VZ-MA has met.⁴² However, VZ-MA should not be penalized for CLECs' internal business decisions, which have led certain CLECs to choose VZ-MA's Graphical User Interface ("GUI") as their means of interacting with VZ-MA's back-end OSS. Indeed, while there are currently seven CLECs using EDI for pre-ordering transactions and 15 CLECs using EDI for ordering transactions in Massachusetts, more than 75 CLECs use VZ-MA's GUI to conduct their business transactions.⁴³

b. KPMG Testing

Another area of focus for CLEC comments was the adequacy of the third-party testing conducted by KPMG Consulting, L.L.C. ("KPMG"). Various CLECs contend in their filings that KPMG's evaluation of VZ-MA's OSS was deficient in certain respects, leading those CLECs to draw the conclusion that KPMG's findings are not indicative of the true state of VZ-

⁴¹ Id. at 4696.

⁴² D.T.E. Evaluation at 99.

⁴³ VZ-MA Application, Appdx. A, Vol. 1, Tab 2, at ¶¶ 21, 40 (VZ-MA McLean/Wierzbicki Decl.)

MA's OSS. First, OnSite, ASCENT, and WorldCom contend that KPMG's evaluation of VZ-MA's OSS was too narrow in scope. Specifically, these commenters contend that KPMG's test, which focused primarily on Local Service Operating Guidelines ("LSOG") 2/3, the predominant environment used by CLECs in Massachusetts, was inadequate because it did not submit VZ-MA's newer LSOG-4 environment to a complete evaluation.⁴⁴ WorldCom contends further that KPMG's test of LSOG-2/3 has little value because VZ-MA "intends to decommission LSOG [2/3] early next year with the introduction of LSOG 5."⁴⁵ WorldCom and OnSite do note in their comments that KPMG did some testing of the LSOG-4 environment; however, both argue that the LSOG-4 testing was limited and insufficient to show VZ-MA's OSS readiness.⁴⁶

The second area of concern raised by commenters with respect to the KPMG evaluation is that KPMG did not perform as thorough an evaluation as it is perceived to have conducted in other jurisdictions (namely, New York and Pennsylvania). OnSite contends that, unlike its evaluation in Pennsylvania, KPMG did not perform root cause analysis on problems that were

⁴⁴ OnSite Comments at 14; ASCENT Comments at 5; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 63-65.

⁴⁵ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 63.

⁴⁶ OnSite Comments at 14; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 64-65.

uncovered during the course of the Massachusetts OSS evaluation.⁴⁷ ASCENT and WorldCom concur with this argument.⁴⁸ WorldCom argues further that the problems associated with KPMG's failure to conduct root cause analysis were compounded by the fact that many Observations were not escalated to the level of Exceptions. WorldCom contends that CLECs were not allowed to comment on Observations, and that, combined with the lack of root cause analysis, this prevented KPMG from compiling a complete record of the problems with VZ-MA's OSS.⁴⁹

ALTS also raised concerns about the adequacy of KPMG's OSS evaluation. Specifically, ALTS contends that the Observations issued by KPMG during the Massachusetts OSS evaluation "clearly document that Verizon continues to erroneously record orders by hand, improperly train employees, incorrectly bill CLECs, and provide CLECs with inaccurate and false end-user information."⁵⁰ ALTS further argues that KPMG did not conduct volume testing of VZ-MA's OSS, stating, "the [Department] even refused to compel high-level commercial volume testing, as it had originally required."⁵¹

⁴⁷ OnSite Comments at 13.

⁴⁸ ASCENT Comments at 5; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 58-61.

⁴⁹ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 58-61.

⁵⁰ ALTS Comments at 23.

⁵¹ Id. at 24.

In addition to CLEC commenters, the DOJ also raised concerns about the thoroughness of KPMG's evaluation of VZ-MA's OSS. The DOJ stated in its evaluation that KPMG's OSS test in Massachusetts "was less significant in several respects than the testing KPMG previously conducted in New York."⁵² Specifically, the DOJ stated that:

KPMG was not asked to conduct a volume test that assumed full-scale commercial entry in Massachusetts, to conduct a volume test of LSOG 4, to strictly adhere to the military-style test philosophy, to fully retest fixes, to conduct root cause analysis of all identified problems, to volume test manual ordering processes, to fully examine the help desk, or to analyze the availability of [VZ-MA's] back-end systems when assessing the overall availability of the OSS interface.⁵³

While it did not argue that these alleged deficiencies in the KPMG evaluation should result in a finding of non-compliance with checklist item 2, the DOJ contends that these issues place more emphasis on the need for post-entry enforcement mechanisms.

Finally, ALTS, Covad, and Rhythms contend that there were alleged deficiencies in KPMG's testing of VZ-MA's provisioning of xDSL and line sharing orders. First, all three commenters argue that because KPMG did not replicate VZ-MA's reported xDSL metrics, there is no proof that VZ-MA is accurately reporting its performance with respect to CLEC xDSL ordering, provisioning, and maintenance and repair.⁵⁴ Covad further argues that the

⁵² DOJ Evaluation at 21.

⁵³ Id. at 21-22 n.74.

⁵⁴ ALTS Comments at 39-40; Covad Comments at 24-25, 34-35; Rhythms Comments at 29-30. In its evaluation, the DOJ also points to the lack of KPMG replication of VZ-
(continued...)

Department, in KPMG's place, "did not make any effort to verify [VZ-MA's] xDSL performance data."⁵⁵ ALTS and Covad also contend that KPMG's OSS evaluation was deficient with respect to VZ-MA's advanced services offerings because KPMG did not test VZ-MA's OSS capabilities in processing line sharing orders.⁵⁶ Finally, Covad argues that KPMG's evaluation of VZ-MA's xDSL provisioning performance was flawed. Specifically, Covad argues that because KPMG's observation of VZ-MA's xDSL provisioning was conducted by accompanying VZ-MA technicians to installation appointments, it was not possible for KPMG to have made an objective review of how VZ-MA technicians perform their installations under normal conditions (implying that VZ-MA's technicians followed their defined procedures only because KPMG was observing the installation).⁵⁷

The Department disagrees with commenters' arguments that KPMG's test was deficient and, thus, should not be relied upon in determining VZ-MA's compliance with the OSS requirements of checklist item 2. While transaction testing of the LSOG-4 environment was limited and there was no volume testing of LSOG-4, KPMG did perform a detailed evaluation of LSOG-4 documentation and of VZ-MA's LSOG-4 CLEC Test Environment ("CTE") Test

⁵⁴(...continued)

MA's xDSL provisioning and maintenance metrics. See DOJ Evaluation at 15.

⁵⁵ Covad Comments at 35.

⁵⁶ ALTS Comments at 41; Covad Comments at 36-37.

⁵⁷ Covad Comments at 35.

Deck.⁵⁸ As we stated in our Evaluation, the majority of CLECs in Massachusetts currently use VZ-MA's LSOG-2/3 environment, and, therefore, the Department instructed KPMG to base the bulk of its evaluation on that environment.⁵⁹ The Department's decision is in line with previous FCC Orders, which emphasized the BOC's implementation of interface software versioning.⁶⁰

We also disagree with the commenters' assertions that, because KPMG's Massachusetts OSS evaluation was not identical to that conducted in New York or Pennsylvania, the Massachusetts test was somehow deficient. There is no correlation between the results of testing in those states and the results of the Massachusetts evaluation. Indeed, WorldCom itself states regularly in its comments that Verizon's performance in other jurisdictions cannot be

⁵⁸ See VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 129-150, 495-540 (KPMG Final Report Version 1.4).

⁵⁹ D.T.E. Evaluation at 95 n.285. We also note that, contrary to the comments of the DOJ, KPMG's New York OSS test did not include a volume test of the LSOG-4 environment, as LSOG-4 was not available until February 2000 and the New York test was completed in August 1999. See VZ-MA Application, Appdx. B, Vol. 46, Tab 545, at 4956-4957 (Transcript of Technical Session Held 8/28/00).

⁶⁰ See SBC Texas Order at ¶ 115 (noting that "versioning is one of the most effective means of ensuring that system changes and enhancements do not adversely affect a carrier's ability to access the BOC's OSS"). The Department's decision to have KPMG focus its evaluation on VZ-MA's LSOG-2/3 environment, in addition to VZ-MA's assertion that LSOG-2/3 will remain available until the release of LSOG-5, ensures that CLECs have, and will continue to have, access to a stable and reliable interface environment to conduct business with VZ-MA.

assumed to be relevant in Massachusetts.⁶¹ Further, during Department technical sessions, KPMG testified that the evaluation it is conducting in Pennsylvania, despite CLEC assertions to the contrary, does not differ in any significant way from the Massachusetts evaluation.⁶²

Further, there is little merit to the commenters' argument that because KPMG was ordered to perform root cause analysis on problems in Pennsylvania, KPMG should have been required to do the same in Massachusetts. KPMG noted during the Department's technical sessions that it does not have the ability to perform root cause analysis on problems uncovered during its Massachusetts evaluation (nor does it have such an ability in other test jurisdictions), and that any such analysis would have to be performed by VZ-MA.⁶³ In fact, VZ-MA did perform root cause analyses on KPMG-issued Observations and Exceptions during the course of the test. Specifically, VZ-MA provided KPMG, the Department, and all participants to the Department's § 271 proceeding with root cause analyses in each of its verbal responses to KPMG Observations and its written responses to KPMG Exceptions.⁶⁴ It is these root cause analyses that enabled KPMG to review, analyze, and, when necessary, re-test VZ-MA's

⁶¹ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 30-36.

⁶² See, e.g., VZ-MA Application, Appdx. B, Vol. 46, Tab 545, at 4957-4958 (Transcript of Technical Session Held 8/28/00) (stating the scope of LSOG-4 testing in Massachusetts and Pennsylvania is very similar with the exception of differences in some of the business scenarios and product offerings).

⁶³ Id. at 4882-4884.

⁶⁴ See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (VZ-MA Responses to KPMG Exceptions); see also D.T.E. Evaluation, Appdx. M.

systems.⁶⁵

WorldCom is also wrong in stating that CLECs had no opportunity to provide input on Observations, and that, as a result, CLECs were disadvantaged by KPMG's decision not to escalate many Observations to Exceptions. During the course of the KPMG test, KPMG and Department staff hosted weekly conference calls in which CLEC representatives had the opportunity to raise questions or concerns with all aspects of the KPMG test. This included a weekly Observation status call that involved both VZ-MA and CLECs, where CLECs had the opportunity to listen to KPMG and VZ-MA discuss open Observations and to question any aspect of these discussions. There was also a weekly CLEC-only conference call with KPMG and Department staff, in which CLECs had the opportunity to raise concerns about any aspect of KPMG's evaluation. WorldCom, like many other CLECs, was an active participant in these weekly calls. Given this participation, it is disingenuous for WorldCom to claim now that CLECs were not given the opportunity to provide input on KPMG Observations.

The FCC should also give no weight to the allegations made by ALTS. While ALTS is correct in stating that KPMG's Observations identified problems with various aspects of VZ-

⁶⁵ With respect to the DOJ's comments on this issue, we note that KPMG followed the same procedures in its Massachusetts test as were used in New York for the identification, evaluation, and resolution of problems with VZ-MA's OSS. When VZ-MA's analysis of a KPMG-reported problem required a re-test, KPMG performed the re-test and reported on the results of those efforts. Thus, the OSS test in Massachusetts did, in fact, adhere to the military-style test philosophy. See VZ-MA Application, Appdx. B, Vol. 46, Tab 545, at 4879-4881 (Transcript of Technical Session Held 8/28/00).

MA's OSS, ALTS fails to acknowledge that each of the Observations raised by KPMG was satisfactorily resolved prior to the conclusion of the test. Further, ALTS' argument that the Department "refused to compel high-level commercial volume testing" lacks any factual support. KPMG conducted a thorough volume test of VZ-MA's LSOG-2/3 environment as part of its evaluation.⁶⁶

We do not agree with commenters that KPMG's evaluation of VZ-MA's ability to provision advanced services warrants a determination that KPMG's test does not provide sufficient evidence of VZ-MA's compliance with its checklist item 2 requirements. First, the Department notes that while KPMG did not replicate VZ-MA's xDSL metrics on a disaggregated basis, xDSL orders were included in KPMG's aggregate UNE-Loop metrics replication. Further, the Department conducted its own replication of VZ-MA's xDSL provisioning and maintenance metrics. Specifically, Department staff replicated VZ-MA's provisioning and maintenance metrics for two-wire xDSL services for June and July 2000. The Department replicated a total of 23 metrics,⁶⁷ and our results matched VZ-MA's reported

⁶⁶ See VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 15-112 (KPMG Final Report Version 1.4).

⁶⁷ The Department only replicated the denominator, or observation count, for VZ-MA's reported installation trouble metrics (PR-6-01 and PR-6-03). Because these metrics address both provisioning and trouble report data, the numerators for these two metrics are taken from a separate database than that which holds the provisioning data reviewed by the Department. For each of these metrics, the Department found VZ-MA's reported observation count to be accurately measured and reported. See Appdx. A.

performance exactly in all but four instances, one in June and three in July.⁶⁸ However, the differences in these four cases are the result of rounding error and not misreporting on the part of VZ-MA. The Department also notes that two metrics reported by VZ-MA, MR-4-09 and MR-4-10, contained discrepancies in the observation counts. For each of these metrics, VZ-MA has cited the total number of repair appointments in its observation count rather than the number of appointments that fit the defined criteria (i.e., for MR-4-09, the number of repairs that had only one dispatch). However, this does not indicate an error in VZ-MA's performance reporting, but rather is an administrative error.⁶⁹

Further, while the commenters are correct in stating that KPMG did not test VZ-MA's ability to process and provision CLEC line sharing orders, we do not believe this fact causes

⁶⁸ See Appdx. A. The metrics for which VZ-MA's and the Department's results varied were: MR-4-02 (Mean Time to Repair ("MTTR")--Loop) in July, MR-4-09 (MTTR--No Double Dispatch) in July, and MR-4-10 (MTTR--Double Dispatch) in both June and July. The difference between VZ-MA's reported performance and the Department's results for these metrics was no greater than 0.02 hours in any of the instances.

⁶⁹ VZ-MA has informed Department staff that the number indicated in the observation count for MR-4-09 and MR-4-10 is the total number of repair appointments, and is not the number of observations used in the calculation of these metrics. VZ-MA states that this administrative error, which has affected the observation counts reported for all MR-4-09 and MR-4-10 metrics, is due to a coding error in the program that generates the printed reports. VZ-MA has assured the Department that this error will be corrected in future Massachusetts Carrier-to-Carrier reports. As this error is administrative in nature only and does not affect the actual metric value, the Department does not find this error to be CLEC-affecting, nor do we find this error to have any impact on VZ-MA's obligations under the Performance Assurance Plan.

KPMG's test to have any less significance. It is important to note that the FCC's Line Sharing Order⁷⁰ had not been released at the time the Master Test Plan for KPMG's evaluation was developed and finalized. Further, despite delays in the start of KPMG's transaction testing, due to Verizon's desire to resolve its missing notifier problem in New York prior to beginning this part of KPMG's testing, KPMG began its transaction testing well before the implementation date of the Line Sharing Order. While we agree that an evaluation of VZ-MA's ability to process line sharing orders would have provided further support to VZ-MA's § 271 application, we note that the logistical constraints of conducting an evaluation on the magnitude as that conducted by KPMG do not allow for constant changing of the test parameters.

Finally, we disagree with Covad's assertion that the way in which KPMG conducted its review of VZ-MA's xDSL provisioning was flawed. The premise of Covad's argument seems to be that no third-party test can be relied upon because absolute blindness during testing cannot be achieved.⁷¹ Covad's premise is unreasonable, and the FCC has never required absolute blindness for third-party testing. Moreover, Covad neglected to raise its concerns about KPMG's evaluation process until well after KPMG had completed its observation of VZ-MA's

⁷⁰ Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket 96-98, FCC 99-355 (rel. Dec. 9, 1999) ("Line Sharing Order").

⁷¹ Covad Comments at 35.

xDSL provisioning process. Covad, like other CLECs, was provided numerous opportunities to comment upon KPMG's evaluation procedures both before and during the test. The FCC should reject Covad's unwarranted and untimely criticism of KPMG's testing methodology.

c. Change Management and Technical Assistance

i. Discussion

Various CLECs have commented on VZ-MA's performance in the area of change management and technical assistance. Both ASCENT and WorldCom contend that VZ-MA has not shown that the documentation it provides to CLECs for the development of their interfaces is adequate to meet the needs of CLECs operating in Massachusetts.⁷² WorldCom further asserts that VZ-MA does not follow its Change Management process in releasing documentation and business rules.⁷³ In support of its argument, WorldCom points to VZ-MA's alleged failure to follow the established Change Management process with respect to the implementation of the ExpressTrak billing system.⁷⁴ Finally, WorldCom argues that VZ-MA's CTE is unstable and does not provide CLECs with an adequate opportunity to prepare their interfaces for commercial production.⁷⁵

⁷² ASCENT Comments at 7; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 73-82.

⁷³ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 99.

⁷⁴ Id. at ¶¶ 102-115.

⁷⁵ Id. at ¶¶ 84-91.

A number of CLECs also address the adequacy of VZ-MA's Wholesale Customer Care Center ("WCCC") in their comments. For example, both ASCENT and Rhythms argue in their comments that the WCCC staff is inadequately trained to meet CLEC needs and respond to CLEC questions.⁷⁶ Rhythms further contends that the WCCC representatives, as well as personnel in the Telecommunications Industry Services Operations Center ("TISOC"), Regional CLEC Coordination Center ("RCCC"), and Regional CLEC Maintenance Center ("RCMC"), are not sufficiently capable of addressing the unique problems experienced by data CLECs.⁷⁷ Rhythms also contends that WCCC personnel frequently fail to return calls and update the status of Help Desk trouble tickets as they are expected to do.⁷⁸ WorldCom also raises similar concerns with VZ-MA's WCCC, noting that KPMG's testing revealed 14 percent of trouble tickets classified as critical, and 22 percent of trouble tickets identified as major, took longer than 28 days to resolve.⁷⁹ WorldCom further argues that WCCC representatives often refuse to open trouble tickets on WorldCom-reported troubles, resulting in delayed resolution of reported problems and inflated performance in VZ-MA's metrics.⁸⁰

ii. Conclusions

⁷⁶ ASCENT Comments at 6; Rhythms Comments at 24-25, Williams Decl. at ¶¶ 26-27.

⁷⁷ Rhythms Comments at 25.

⁷⁸ Rhythms Comments at 25, Williams Decl. at ¶ 26.

⁷⁹ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 118.

⁸⁰ Id. at ¶ 120.

The Department disagrees with the arguments of both ASCENT and WorldCom with respect to VZ-MA's adherence to its Change Management process and the adequacy of its documentation. The commenters' argument that VZ-MA's documentation prevents an efficient competitor from having the opportunity to compete is belied by the significant number of CLECs that have built their EDI interfaces using VZ-MA's existing documentation.⁸¹ As to WorldCom's contention that VZ-MA has failed to follow its Change Management process in the implementation of the ExpressTrak billing system, we note VZ-MA has testified that it has no intention of implementing ExpressTrak in Massachusetts before the end of 2000, and, therefore, CLECs should not expect to receive any documentation on ExpressTrak before an implementation time line is developed.⁸² Finally, though WorldCom claims that VZ-MA's CTE is unstable and does not afford CLECs an opportunity to test their own interfaces, WorldCom provides no evidence to dispute KPMG's finding that VZ-MA improved the adequacy of its

⁸¹ See D.T.E. Evaluation at 80 (stating that 15 CLECs are currently using VZ-MA's EDI interface in Massachusetts).

⁸² VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4765-4770 (Transcript of Technical Session Held 8/22/00). The Department notes that the information request cited by WorldCom in its comments was filed at an earlier date than the Technical Session testimony on which the Department has based its findings. The Department addressed WorldCom's complaints about the implementation of ExpressTrak in our Evaluation. See D.T.E. Evaluation at 62-63. While VZ-MA may have intended to implement ExpressTrak in Massachusetts before the end of 2000 at one point, the most current testimony on the record confirms that it no longer has that intention. VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4765-4770 (Transcript of Technical Session Held 8/22/00).

CTE Test Deck during KPMG's June 2000 release re-test so that KPMG was able to complete the testing of its interfaces during the established new release test period.⁸³

The Department also disputes the commenters' arguments that VZ-MA's WCCC is inadequate to meet CLECs' technical assistance needs. Though Rhythms raised its concerns regarding the WCCC's responsiveness during the Department's § 271 proceeding, Rhythms did not provide any evidence to support its contention that WCCC personnel do not respond to trouble tickets and return calls as expected. Further, we addressed WorldCom's assertion that the WCCC takes too long to resolve Help Desk trouble tickets in our Evaluation.⁸⁴ We do not find WorldCom to have provided any new insight on this issue that would lead us to place less weight on KPMG's finding that the WCCC adequately meets CLECs' technical assistance needs.

Finally, as WorldCom did not raise the issue of WCCC personnel refusing to open trouble tickets during the Department's § 271 proceeding, we have not had the opportunity to independently investigate it. However, the Department notes that VZ-MA has stated previously that it is the WCCC's policy to open a trouble ticket for every CLEC call, regardless of the severity of the reported trouble.⁸⁵ WorldCom has provided no evidence to refute VZ-MA's

⁸³ See VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Disposition Report for Exception #5).

⁸⁴ See D.T.E. Evaluation at 76-77.

⁸⁵ See VZ-MA Application, Appdx. B, Vol. 32b, Tab 423, at ¶ 201 (VZ-MA May OSS
(continued...))

statement, and, indeed, has only raised this issue for the first time in its FCC filing.

d. Pre-Ordering

i. Discussion

Within the Pre-Ordering domain, CLECs raised three primary concerns with VZ-MA's OSS performance: interface availability, and the alleged inadequacy of VZ-MA's pre-order transaction responses and access to VZ-MA's loop information.⁸⁶ First, Rhythms, ASCENT, and WorldCom argue that VZ-MA's GUI is frequently unavailable, causing CLECs to experience unnecessary delays in performing their pre-order functions.⁸⁷ In its comments, WorldCom contends that VZ-MA's reported GUI availability performance is misleading because VZ-MA does not include the unavailability of back-end OSS in its measurements.⁸⁸ WorldCom argues that the unavailability of back-end OSS adversely affects CLECs because it

⁸⁵(...continued)
Aff.).

⁸⁶ OnSite and Winstar both commented on VZ-MA's pre-ordering OSS offerings, contending that VZ-MA has not met its obligations. See OnSite Comments at 15-17; Winstar Comments at 18-21. However, both commenters provided only summaries of the complaints raised during the Department's § 271 proceeding, which we fully addressed in our Evaluation. See D.T.E. Evaluation at 78-99.

⁸⁷ Rhythms Comments, Williams Aff. at ¶ 21; ASCENT Comments at 6; WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 129-141.

⁸⁸ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 131.

is they, “far more than Verizon, that are trying to expand their base of local customers.”⁸⁹

WorldCom argues that, if back-end OSS availability is taken into account, VZ-MA’s GUI was available only 88.9 percent of the time during prime time hours between November 1999 and June 2000.⁹⁰

With respect to the adequacy of VZ-MA’s pre-order responses, only WorldCom has submitted comments contending that VZ-MA has not met its § 271 obligations. In arguing that VZ-MA does not provide complete and accurate pre-order responses, WorldCom points to statements in KPMG’s Final Report noting that a single field in the Address Validation transaction response, the type of housing unit, was incorrectly populated on 64 percent of KPMG’s transaction responses.⁹¹ WorldCom also notes that KPMG did not initially receive responses on two percent of its pre-order transactions, and that KPMG found the information contained in the error remarks field on some pre-order error responses to be insufficient to correct the errors in the pre-order transaction.⁹²

Finally, several commenters argue that the FCC’s UNE Remand Order requires VZ-

⁸⁹ Id. at ¶ 132.

⁹⁰ Id. at ¶ 136.

⁹¹ Id. at ¶ 51.

⁹² Id. at ¶¶ 52-53.

MA to make available to CLECs all underlying loop information that VZ-MA possesses.⁹³

According to Covad and Digital Broadband, VZ-MA's refusal to provide direct access to its Loop Facilities Assignment and Control System ("LFACS") database is a violation of FCC rules and demonstrates Verizon's failure to meet its § 271 obligations.⁹⁴

ii. Conclusions

The commenters' arguments regarding the availability of VZ-MA's GUI are without merit. As we found in our Evaluation, VZ-MA provides CLECs with a stable interface through the GUI despite infrastructure problems that VZ-MA resolved during May and June 2000.⁹⁵ The Department specifically rejects WorldCom's argument that interface availability metrics should include the availability of VZ-MA's back-end OSS. The Department disagrees with WorldCom's claim that back-end OSS unavailability affects CLECs to a greater extent than it does VZ-MA. If a back-end system is unavailable, it equally affects both VZ-MA and the CLECs that use that system. The interface availability metrics that VZ-MA reports are designed to report the availability of the interface in order to show that VZ-MA is meeting its obligation to provide CLECs with parity of access to its back-end systems.

WorldCom's contention that VZ-MA's pre-order transaction responses are inaccurate is also without merit. While WorldCom correctly cites KPMG's finding that the unit type

⁹³ ALTS Comments, Kiser Decl. at ¶ 10; Covad Comments at 41.

⁹⁴ ALTS Comments, Kiser Decl. at ¶¶ 11-14; Covad Comments at 41-43.

⁹⁵ See D.T.E. Evaluation at 84-85.

identifier on VZ-MA's address validation responses was inaccurate on 64 percent of KPMG's test transactions, WorldCom ignores two important points. First, WorldCom fails to note that the root cause of this problem was that KPMG's test accounts were manually entered into two separate databases during the test set-up, a situation that was unique to the third-party test and will never affect CLECs.⁹⁶ Second, assuming this situation could occur in the real commercial environment, WorldCom portrays this discrepancy as a significant problem despite the fact that KPMG's reported discrepancy affected only one of 41 fields on the address validation transaction.⁹⁷ As such, the Department finds that the problems cited by WorldCom do not affect an efficient competitor's ability to compete in the local service market.

Finally, the Department disagrees with arguments made by Digital Broadband and Covad that not having direct access to VZ-MA's LFACS today demonstrates that VZ-MA does not offer nondiscriminatory access to information about its loops. As noted in our Evaluation, VZ-MA provides the following information about its loops through its enhanced, mechanized database: total metallic loop length (including bridged taps; and presence of load coils, digital loop carrier, interferors, digital single subscriber carrier) and qualification for ADSL/HDSL

⁹⁶ VZ-MA Application, Appdx. B, Vol. 47, Tab 560 (VZ-MA Response to Record Request 354).

⁹⁷ VZ-MA Application, Appdx. I, Vol. 1, Tab 1, at 57 (KPMG Final Report Version 1.4).

per VZ-MA standards.⁹⁸ The Department declined Digital Broadband's request to direct VZ-MA to make access to LFACS available to CLECs in our Phase III Order,⁹⁹ but we note that this very issue is the subject of a Digital Broadband motion for reconsideration of that Order, and, thus, remains an open matter before the Department. Finally, Covad raised a series of complaints about Verizon related to information requests made in the regional collaborative.¹⁰⁰ Covad has not made these allegations before us; therefore, we were unable to direct VZ-MA to respond and, consequently, have no record upon which to comment.

e. Ordering

i. Discussion

A number of commenters dispute VZ-MA's compliance with the FCC's requirements that it provide nondiscriminatory access to its ordering OSS.¹⁰¹ First, ASCENT and WorldCom contend that VZ-MA is not meeting its requirements to provide competitors with timely and accurate notifiers, including acknowledgments, confirmations, rejects, and

⁹⁸ D.T.E. Evaluation at 295 n.937.

⁹⁹ D.T.E. Evaluation, Appdx. E, at 25 (Phase III Order) (finding that because the issue of additional loop makeup information -- one option of which is direct access to LFACS -- is squarely before CLECs in the New York regional xDSL collaborative, it would be inappropriate for the Department to make the decision for these CLECs).

¹⁰⁰ Covad Comments at 42-43.

¹⁰¹ Though OnSite and Winstar each included a discussion of VZ-MA's ordering OSS in their comments, neither commenter addressed any issues that we had not adequately covered in our Evaluation. See OnSite Comments at 17-20, Winstar Comments at 21-23; see also D.T.E. Evaluation at 99-148.

completion notices. ASCENT argues that VZ-MA’s failure to provide CLECs with these notifiers leaves “competitors in the dark far too often and far too long regarding the status of orders, including whether orders submitted have actually been received, are being processed, require additional information, are completed or have been rejected.”¹⁰²

WorldCom contends that the missing notifier problem that plagued VZ-NY shortly after its § 271 approval still exists.¹⁰³ Specifically, WorldCom points to KPMG’s OSS evaluation findings in which KPMG reported that it did not receive completion notices on 2.3 percent of its orders.¹⁰⁴ Further, WorldCom contends that Verizon has not met its obligation to retransmit missing notifiers within three days of a CLEC’s notification that the notifier was not received.¹⁰⁵ WorldCom also contends that when Verizon does retransmit missing notifiers, it often transmits the wrong notifier, thus further delaying resolution of the problem.¹⁰⁶ Finally, WorldCom argues that Verizon’s notifiers are often inaccurate, citing KPMG’s finding that some information on VZ-MA’s Billing Completion Notices (“BCNs”) was not included in accordance

¹⁰² ASCENT Comments at 7.

¹⁰³ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 40-49.

¹⁰⁴ Id. at ¶ 41.

¹⁰⁵ Id. at ¶¶ 123-126.

¹⁰⁶ Id. at ¶ 126.

with VZ-MA Business Rules.¹⁰⁷

The next area of VZ-MA's ordering OSS cited by commenters as being deficient is the level of flow-through that CLECs experience for their orders. WorldCom contends that VZ-MA's low total flow-through figures are indicative of VZ-MA's failure to provide nondiscriminatory access to CLECs. WorldCom argues that VZ-MA's low flow-through levels are problematic because orders that do not flow-through must be processed manually by VZ-MA's TISOC personnel and are thus vulnerable to manual processing errors.¹⁰⁸

In addition to WorldCom, Covad and Rhythms argue that VZ-MA's ordering OSS are incapable of electronically processing xDSL and line sharing orders.¹⁰⁹ Further, Covad and Rhythms argue that the lack of flow-through for xDSL and line sharing orders requires data CLECs to rely heavily on VZ-MA's TISOC staff. However, both CLECs contend that VZ-MA has refused to expand the TISOC's hours of operation in response to CLEC complaints.¹¹⁰

Finally, the commenters argue VZ-MA has not met its § 271 obligations because VZ-MA is unable to provide CLECs with accurate "Line Loss" reports. Specifically, WorldCom contends that although Verizon has corrected some of the problems associated with its

¹⁰⁷ Id. at ¶ 54.

¹⁰⁸ Id. at ¶¶ 154-164.

¹⁰⁹ WorldCom Comments at 61; Covad Comments at 33; Rhythms Comments, Williams Decl. at ¶¶ 23-24.

¹¹⁰ Covad Comments at 48-49; Rhythms Comments, Williams Decl. at ¶¶ 24-25.

transmission of Line Loss reports, problems remain with the accuracy of Verizon's reports.

WorldCom argues that while these problems are infrequent, the impact of Line Loss report errors on WorldCom's ability to do business is significant.¹¹¹ Finally, WorldCom argues that because VZ-MA's Line Loss reports were not tested by KPMG, there is no proof that VZ-MA is meeting its obligations to provide CLECs with accurate Line Loss reports.¹¹²

ii. Conclusions

Again, the commenters have raised no issues sufficient to warrant a finding of non-compliance with the requirements of checklist item 2. First, while the Department agrees with ASCENT's characterization of the problems that could arise if VZ-MA did not provide notifiers to CLECs, we note that ASCENT has provided no evidence in its comments that this is the case in Massachusetts, nor did ASCENT provide any such evidence during the Department's § 271 proceeding.¹¹³

Further, with respect to WorldCom's claims that KPMG's test shows that VZ-MA is unable to meet its obligation to provide accurate and timely notifiers, we again disagree with WorldCom's characterization of KPMG's findings. For example, while WorldCom states that

¹¹¹ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 147-151.

¹¹² Id. at ¶ 151.

¹¹³ In our Evaluation, we addressed issues raised by AT&T with respect to late and missing notifiers. See D.T.E. Evaluation at 116-122. Notably, AT&T, the only CLEC to raise notifier complaints during the Department's § 271 proceeding, did not raise any such issues in its initial comments to the FCC.

KPMG did not receive completion notices on 2.3 percent of its orders, WorldCom fails to acknowledge VZ-MA's responses to several Department record requests, which indicate that each of the notices identified by KPMG as missing were either sent, delayed due to a system problem that was subsequently corrected, or should not have been expected because the order was canceled.¹¹⁴

With respect to VZ-MA's flow-through levels, we affirm our earlier finding that VZ-MA's low total flow-through levels are not indicative of VZ-MA's capabilities. As we stated in our Evaluation, VZ-MA's flow-through data, when viewed on a CLEC-by-CLEC basis, shows that VZ-MA's systems are capable of attaining a high level of order flow-through, but that these flow-through levels are highly dependent on the care a CLEC takes in submitting its LSRs.¹¹⁵ In addition, Covad's and Rhythms' arguments concerning the flow-through of xDSL and line sharing orders are without merit. VZ-MA's systems do allow for the flow-through of complete and accurate LSRs for pre-qualified ADSL orders of up to ten lines.¹¹⁶ As indicated in our Evaluation, VZ-MA has been directed by the Department to implement the necessary

¹¹⁴ VZ-MA Application, Appdx. B, Vol. 47, Tab 560 (VZ-MA Response to Record Request 351); VZ-MA Application, Appdx. B, Vol. 47, Tab 560 (VZ-MA Response to Record Request 352).

¹¹⁵ See D.T.E. Evaluation at 103-109, 122-125, 141-144.

¹¹⁶ Id. at 104-105. See also VZ-MA Application, Appdx. B, Vol. 34a, Tab 443 (VZ-MA Response to Information Request DTE 5-35).

upgrades to its OSS to allow for line sharing order flow-through by April 1, 2001.¹¹⁷ No carrier has produced record evidence demonstrating that VZ-MA's temporary manual processing of line sharing orders has hindered that CLEC's ability to compete. Moreover, we note that Covad's and Rhythms' concern over the TISOC hours of operation was addressed in our previous comments.¹¹⁸

Finally, we note again that WorldCom failed to produce evidence to support its arguments about VZ-MA's Line Loss reporting, and we remain persuaded that VZ-MA is meeting its requirements in this area. Indeed, as we noted in our Evaluation, trouble tickets opened for Line Loss report complaints affected only 0.3 percent of reported lines in July 2000 and 0.1 percent of reported lines through the first 25 days of August.¹¹⁹ Despite the low percentage of Line Loss report troubles, we note that VZ-MA continues to improve its Line Loss reporting.¹²⁰ Therefore, we see no reason to view VZ-MA's Line Loss reporting as a point of non-compliance with the obligations of checklist item 2.

f. Provisioning

WorldCom is the only commenter to raise concerns about VZ-MA's compliance with its obligation to provide nondiscriminatory access to its provisioning OSS. WorldCom contends

¹¹⁷ See D.T.E. Evaluation at 327-328 for additional discussion.

¹¹⁸ Id. at 129-131.

¹¹⁹ Id. at 134-135 n.411.

¹²⁰ Id. at 135.

that Verizon continues to offer CLECs due dates via its SMARTs Clock that are much longer than should be expected.¹²¹ WorldCom included as an attachment to its comments a series of charts showing the due dates it received via the SMARTs Clock on orders in New York and Pennsylvania over the past few months.¹²² Because WorldCom did not present this evidence during the Department's § 271 proceeding, we are unable to provide any analysis of the data WorldCom offers to support its argument. However, it must be noted that WorldCom's data refer only to its experiences in New York and Pennsylvania.

g. Maintenance and Repair

Only Winstar submitted comments concerning the adequacy of VZ-MA's maintenance and repair OSS offerings.¹²³ However, Winstar did not raise any issues in its filing that were not previously raised by other parties during the Department's § 271 proceeding and addressed sufficiently in our Evaluation.¹²⁴ Indeed, Winstar's comments with regard to maintenance and repair focus not on Winstar's own documented experiences but, rather, merely repeat complaints raised by other participants during the Department's proceeding and resolved

¹²¹ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶¶ 142-144.

¹²² Id., Attachment 7.

¹²³ See Winstar Comments at 23-25.

¹²⁴ See D.T.E. Evaluation at 165-181.

there.¹²⁵

h. Billing

i. Discussion

In its comments, WorldCom raised a number of concerns that it contends show VZ-MA's inability to provide nondiscriminatory access to its billing OSS. Specifically, WorldCom contends that Verizon is incapable of providing accurate and timely daily usage files ("DUF") and wholesale bills. WorldCom states that it has "observed some inaccuracies on its bills" and points to KPMG's evaluation as further proof that VZ-MA's billing obligations are not being met.¹²⁶ In support of its argument, WorldCom makes reference to various Observations and Exceptions issued by KPMG during the course of its evaluation.¹²⁷ WorldCom argues that these problems prevent CLECs from operating at parity with VZ-MA's retail operations, and thus, VZ-MA's application should be denied.¹²⁸

WorldCom also argues that it still experiences problems with Verizon's practice of Suspensions for Non-Payment of Verizon services ("SNPs"). WorldCom contends that it has had a significant number of its customers disconnected by Verizon because these customers

¹²⁵ Various CLECs have commented on maintenance and repair issues related to VZ-MA's UNE-Loop offerings. These comments are addressed in Section II.D.2.c, below.

¹²⁶ WorldCom Comments, Kwapniewski/Lichtenberg Decl. at ¶ 172.

¹²⁷ Id. at ¶¶ 172-173.

¹²⁸ Id. at ¶ 174.

have outstanding balances on previous accounts with Verizon’s retail service.¹²⁹ WorldCom notes that Verizon implemented a manual fix on May 23, 2000, and a permanent fix in August, but contends that these fixes have not resolved the underlying problems, as WorldCom has had an additional 65 customers disconnected by Verizon since the implementation of the manual fix, including ten customers in September.

Another assertion that WorldCom raised in its comments is Verizon’s alleged failure to provide wholesale bills in electronic format. WorldCom contends that it has repeatedly requested electronic billing from Verizon since Verizon’s announcement in January 2000 that all bill types would be available electronically. WorldCom states that Verizon agreed in July 2000 to provide WorldCom with electronic bills once WorldCom submitted to Verizon a list of Billing Account Numbers (“BANs”) for those bills WorldCom wanted to receive electronically.¹³⁰ WorldCom argues that even though it provided Verizon with the necessary

¹²⁹ WorldCom Kwapniewski/Lichtenberg Decl. at ¶¶ 152-153. WorldCom notes in its comments that the problem of SNPs has not been addressed in a previous § 271 application because the problem was not apparent prior to the FCC’s approval of VZ-NY’s application. However, WorldCom further argues that this problem has been ongoing with Verizon for more than fourteen months, noting that “WorldCom first raised this issue with Verizon in March 1999,” approximately six months before VZ-NY filed its § 271 application with the FCC. The Department affords little weight to WorldCom’s overall assessment of this alleged problem in view of its inconsistent statements.

¹³⁰ Id. at ¶ 168.

BAN information, it still has not begun receiving electronic bills.¹³¹ Moreover, WorldCom contends that it has experienced significant problems due to Verizon's late transmission of wholesale bills. Specifically, WorldCom asserts that Verizon frequently fails to send WorldCom's bills on time and then demands that WorldCom pay late charges.¹³² Finally, WorldCom also contends that Verizon has consistently failed to keep track of payments made by WorldCom and has forced WorldCom to expend unnecessary time and expense to prove that it has paid its bills.¹³³

ii. Conclusions

As with previous WorldCom claims, its billing complaints are not supported by any factual evidence. Specifically, WorldCom provides no evidence in its comments to support its claims that Verizon has provided it with inaccurate usage data and wholesale bills, nor did it provide any such evidence during the Department's § 271 proceeding. As to WorldCom's reference to KPMG's evaluation and the Observations and Exceptions issued therein, WorldCom fails to point out that KPMG closed each of the cited Observations and Exceptions with satisfaction that VZ-MA had resolved each of the problems raised by KPMG.¹³⁴

¹³¹ Id.

¹³² Id. at ¶ 169.

¹³³ Id. at ¶ 170.

¹³⁴ See D.T.E. Evaluation at Appdx. M (Observation Status Summary Dated August 25, 2000); VZ-MA Application, Appdx. I, Vol. 2, Tab 2 (Disposition Reports for
(continued...)

The remainder of WorldCom's arguments were raised during our § 271 proceeding and addressed sufficiently in our Evaluation.¹³⁵ However, it is necessary to respond to several of those allegations here because WorldCom now changes the substance of its arguments since first raising them with the Department. In our Evaluation, we addressed WorldCom's contention that Verizon had mistakenly disconnected WorldCom customers for non-payment of previous Verizon bills.¹³⁶ As noted in the Evaluation, VZ-MA's investigation of WorldCom's claims found that only two WorldCom customers had been mistakenly disconnected after May 23, 2000 (i.e., after Verizon's manual fix).¹³⁷ Importantly, WorldCom does not dispute VZ-MA's findings with respect to its original claims but, rather, it now claims different customers have been disconnected.¹³⁸ Further, no participant raised the issue of SNPs with respect to

¹³⁴(...continued)

Exceptions #6 and #11). The Department notes that KPMG's satisfactory closure of the Observations and Exceptions cited by WorldCom were based on either re-tests of VZ-MA's billing processes or the evaluation and confirmation of VZ-MA explanations for KPMG's perceived errors. In a number of cases, KPMG closed issues because it found its initial assessment to be based on an inaccurate understanding of VZ-MA's policies and procedures. See, e.g., D.T.E. Evaluation, Appdx. M, at 20 (stating that KPMG closed Observation issue 41.4 after confirming VZ-MA's explanation that KPMG incorrectly expected to receive a charge that was not applicable to the class of service on KPMG's lines).

¹³⁵ See, generally, D.T.E. Evaluation at 181-196.

¹³⁶ Id. at 187-188.

¹³⁷ Id. at 188.

¹³⁸ Though WorldCom now contends that an additional 40 customers have had their service
(continued...)

Massachusetts customers during the Department's proceeding. Indeed, only WorldCom raised this issue to any degree before the Department.

With respect to the availability of electronic transmission of wholesale bills, the Department is not swayed by WorldCom's complaints. When WorldCom raised the same issue during the Department's § 271 proceeding, it neglected to mention Verizon's January 2000 notice that all bills are available in electronic format but, rather, stated that Verizon did not offer electronic bills anywhere in the region.¹³⁹ Further, though Verizon testified at Department technical sessions that it had informed all CLECs in January 2000 of the availability of electronic bill formats for all bill types, WorldCom did not contest Verizon's testimony, nor did WorldCom raise any complaints about Verizon failing to respond to its requests for electronic bills.¹⁴⁰ There is no evidence in the record, either from WorldCom or any other participant, to support WorldCom's recent claims.

As to the issue of Verizon's alleged late transmission of wholesale bills and attempts to assess late fees for payments made on bills that were sent late, the Department questioned

¹³⁸(...continued)

disconnected for non-payment of Verizon bills, and lists these additional SNPs in an attachment to its comments, the Department is unable to address the validity of WorldCom's claim, as they were not raised during the Department's § 271 proceeding.

¹³⁹ VZ-MA Application, Appdx. B, Vol. 37, Tab 455, at ¶ 134 (WorldCom Lichtenberg/Sivori Decl.).

¹⁴⁰ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4585, 4600-4602 (Transcript of Technical Session Held 8/21/00); VZ-MA Application, Appdx. B, Vol. 46, Tab 538, at 4678 (Transcript of Technical Session Held 8/22/00).

WorldCom as to whether it notifies Verizon when it does not receive expected wholesale bills.

WorldCom claimed that it does notify Verizon “as soon as it is aware that it has not received a bill.”¹⁴¹ WorldCom contends that it had notified Verizon in mid-May 2000, that it had not received its May UNE bill in New York, but that Verizon did not retransmit the bill until June 7, 2000.¹⁴² VZ-MA responded that WorldCom did not notify Verizon of any problems with the May UNE bill until it sent an e-mail to Verizon’s billing and collections center on June 2, 2000.¹⁴³

Verizon further testified that it informed WorldCom of the proper procedures for reporting a missing bill, which include calling the WCCC, but that WorldCom failed to follow those procedures and instead called the systems support center on June 5, 2000. Verizon stated that, although WorldCom failed to follow properly defined procedures, Verizon still researched WorldCom’s complaint and re-transmitted WorldCom’s bill within three hours of receiving WorldCom’s call.¹⁴⁴ Despite being afforded numerous opportunities, WorldCom has not contested VZ-MA’s testimony as to the details of this situation.

Finally, with respect to WorldCom’s claim that Verizon loses track of WorldCom

¹⁴¹ VZ-MA Application, Appdx. B, Vol. 41, Tab 488 (WorldCom Response to Information Request DTE-WCOM-6).

¹⁴² Id.

¹⁴³ VZ-MA Application, Appdx. B, Vol. 46, Tab 533, at 4585-4586 (Transcript of Technical Session Held 8/21/00).

¹⁴⁴ Id.

payments, the Department notes that WorldCom has not contested VZ-MA's explanation that it is required to request proof of payment from WorldCom and other carriers when these carriers fail to submit the payment stubs from the bills they are paying.¹⁴⁵ VZ-MA states that without the payment stubs, it is very difficult for it to reconcile CLEC accounts, and, therefore, VZ-MA asks CLECs to provide proof of payment for their bills. Though VZ-MA provided this explanation for what WorldCom contends is discriminatory activity in early August, WorldCom did not dispute VZ-MA's explanation.

2. Pricing

A number of commenters contend that VZ-MA is not in compliance with checklist item 2 because, they allege, its prices for UNEs in Massachusetts are not properly based on the FCC's total-element, long-run incremental cost ("TELRIC") method.¹⁴⁶ The DOJ states that it has not reached any final conclusions about Verizon's "failure . . . to make certain network elements available to competitors at cost-based prices,"¹⁴⁷ but that "there are reasons to suspect that in some cases [certain prices for UNEs] have not been based on the relevant costs of the

¹⁴⁵ See VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 96 (VZ-MA August Supplemental OSS Aff.)

¹⁴⁶ See WorldCom Comments at 2-38, Bryant Decl.; AT&T Comments at 2-8; CompTel Comments at 5-9; ASCENT Comments at 3-6; and Attorney General Comments at 3-5.

¹⁴⁷ DOJ Evaluation at 17.

network elements.”¹⁴⁸ While we disagree with the DOJ that there is any question that VZ-MA’s UNE prices are cost-based, it is significant that both the Department and the DOJ agree that the appropriate standard for evaluating UNE prices is whether they are cost-based, and not whether there is a sufficient margin between costs and revenues (i.e., the “price squeeze” argument), as suggested by WorldCom and the Attorney General.¹⁴⁹

Almost all of the arguments raised by the commenters were anticipated by the Department and thus were addressed in detail in our Evaluation.¹⁵⁰ We will not repeat here what we said in our Evaluation; however, some comments warrant reply. We group our responses under five headings.

First, WorldCom contends that (1) the Department has “rubber-stamped” VZ-MA’s UNE rates; and (2) that “the [Department] has shown scant interest in promoting local residential competition generally.”¹⁵¹ The first claim is clearly untrue and does not do justice to the hard work of the Department and its appointed arbitrator in setting UNE rates.¹⁵² The

¹⁴⁸ Id. at 19.

¹⁴⁹ We do not concede that there is a price squeeze in Massachusetts. We simply assert that the question of a price squeeze is irrelevant to a checklist investigation.

¹⁵⁰ See D.T.E. Evaluation at 199-223.

¹⁵¹ WorldCom Comments at 34.

¹⁵² At the request of VZ-MA, AT&T, WorldCom, and others, the Department appointed Paul F. Levy as the arbitrator for the initial series of arbitrations, including the setting of UNE rates, the wholesale discount, and establishing performance standards. Mr.

(continued...)

Department's evaluation of UNE cost studies was thorough, fair, and well-reasoned in its analysis.¹⁵³ The second claim also is false. WorldCom's analysis of VZ-MA's UNE prices does not support a general conclusion either about the motives of the Department or about the status of competition for residential customers in Massachusetts.¹⁵⁴

Some commenters also questioned the Department's commitment to TELRIC-based

¹⁵²(...continued)

Levy currently is the Executive Dean for Administration at Harvard Medical School. Before joining Harvard Medical School, Mr. Levy was adjunct professor of environmental policy at MIT, where he taught infrastructure planning and development and environmental policy for seven years. Mr. Levy has served as executive director of the Massachusetts Water Resources Authority, Chairman of the Massachusetts Department of Public Utilities, and Director of the Arkansas Department of Energy. He currently serves on the board of directors for the Providence Energy Corporation, Water Solutions Group, LLC, and the Silent Spring Institute. Mr. Levy received his B.S. in Economics, B.S. in Urban Studies and Planning, and Masters in City Planning from MIT.

¹⁵³ CompTel argues that the Department's evaluation of UNE rates was not "a true all-party rate proceeding," or a "generic cost docket . . . but resulted instead from a consolidated proceeding to arbitrate several discrete interconnection agreements." See CompTel Comments at 8. This is true, but we do not see what negative conclusion this fact is evidently thought by CompTel to support. The Act itself provides that rate decisions be made in the context of arbitrations, and the "discrete" agreements that were subject to the Consolidated Arbitrations involved AT&T, WorldCom, Sprint Communications Company, L.P. ("Sprint"), Teleport, and Brooks Fiber. It is hard to imagine what other carriers would have been involved in a so-called "all-party proceeding" in 1996. Consolidated Arbitrations, D.P.U./D.T.E. 96-73/74, 96-75, 96-80/81, 96-94 ("Consolidated Arbitrations").

¹⁵⁴ See The DOJ's conclusion: "[T]he MA DTE has ensured that Massachusetts will benefit from competition . . . and the [DOJ] is particularly pleased to see a major commitment to facilities-based residential competition by AT&T Broadband and RCN." DOJ Evaluation at 2.

rates.¹⁵⁵ Bald and unconvincing assertion does not establish the factual truth. There is no weight to this airy claim. Notably, the Attorney General “does not question that the [Department] is committed to follow the FCC’s TELRIC pricing rules.”¹⁵⁶ As we stated in our Evaluation, “[t]he Department has established UNE prices in Massachusetts consistent with basic TELRIC principles. One cannot read the various Department TELRIC Orders and reasonably conclude otherwise.”¹⁵⁷

Second, several commenters contend that the Department either “has no stated plans to convene a cost proceeding,” or has “declared that it would refuse to consider [UNE rates] again until December 2001.”¹⁵⁸ Both of these contentions are categorically false. As we discussed in our Evaluation, the Department will do a complete review of all UNE rates and the wholesale discount next year.¹⁵⁹ The start-up date for that investigation depends on the U.S. Supreme Court’s decision whether to review the Eighth Circuit’s vacatur of the FCC’s

¹⁵⁵ WorldCom Comments at 37; CompTel Comments at 9.

¹⁵⁶ Attorney General Comments at 5.

¹⁵⁷ D.T.E. Evaluation at 213.

¹⁵⁸ CompTel Comments at 8; WorldCom Comments at 17.

¹⁵⁹ D.T.E. Evaluation at 216-217. WorldCom has advocated that the Department do an investigation into only a subset of UNE rates. The Department’s scheduled review will include all UNE rates and the wholesale discount, as it properly should, and not just the handful of UNE rates to which WorldCom objects. In fact, it is worth noting that when the Department broached with WorldCom this past May the possibility of advancing the start of the comprehensive rate investigation by a year, WorldCom representatives expressed strong opposition to that course of action.

pricing rules. We believe the Court will, but it is prudent and administratively efficient to pause and await the Court's signal. With respect to WorldCom's allegation that the Department refused to consider UNE rates until December 2001, the statement referenced by WorldCom actually read as follows: "[W]e determine that the resale rates contained in the Phase 2 Order and the UNE rates contained in the Phase 4 Order shall be in effect until December 2001."¹⁶⁰ Clearly, in order to have new rates ready to be in effect from and after December 2001, the Department will necessarily begin its rate consideration well in advance of that month.

Third, some commenters erroneously contend that, whenever an ILEC faces an "unresolved rate dispute with its competitors,"¹⁶¹ there are a number of FCC requirements, which, they contend, have not been met in Massachusetts. Those requirements are as follows: (a) an on-going state consideration of rates; (b) establishment of interim rates; (c) a demonstration that a state commission is committed to the FCC's pricing rules; and (d) a "true-up" provision.¹⁶² As noted above, the Department is committed to TELRIC-based rates (item c), but the other "requirements" (items a, b, and d) are not in place generally for UNE rates in Massachusetts. We believe that these commenters mis-read what the FCC refers to as an "unresolved rate dispute" in this context.

¹⁶⁰ VZ-MA Application, Appdx. F, Tab 157, at 15-16 (D.T.E. 98-15 (Phase II, III)) (emphasis added).

¹⁶¹ See SBC Texas Order at ¶ 236.

¹⁶² Attorney General Comments at 5; CompTel Comments at 8.

It is clear to the Department from the FCC's Orders¹⁶³ that the "unresolved rate dispute" the FCC is referring to in this context is one in which the state commission has not yet established permanent rates for particular UNEs.¹⁶⁴ On the contrary, the so-called "rate dispute" in Massachusetts is one in which some CLECs contend that permanent, Department-approved UNE rates in Massachusetts are not TELRIC-compliant. The rate dispute was resolved; some just do not like the resolution. The FCC does have a standard to apply in the case where permanent UNE rates are challenged,¹⁶⁵ but the requirements for an ongoing proceeding, interim rates, and a true-up mechanism are discussed by the FCC only in the context of situations where there are no permanent rates for particular UNEs.

Fourth, it is very important to note that, with one exception, no carrier or other

¹⁶³ See Bell Atlantic New York Order at ¶¶ 250, 257-260; SBC Texas Order at ¶¶ 236-237, 241.

¹⁶⁴ SBC Texas Order at ¶ 236 (footnote omitted):

As previously discussed, we are reluctant to deny a section 271 application because a BOC is engaged in an unresolved rate dispute with its competitors and the relevant state commission, which has primary jurisdiction over the matter, is currently considering the matter. Instead, as we have explained, interim rate solutions are a sufficient basis for granting a 271 application when an interim solution to a particular rate dispute is reasonable under the circumstances, the state commission has demonstrated its commitment to our pricing rules, and provision is made for refunds or true-ups once permanent rates are set.

¹⁶⁵ See Bell Atlantic New York Order at ¶ 244.

intervenor in the Department's UNE rate proceeding has taken advantage of the specific legal recourse provided by Congress (i.e., an appeal to federal district court, pursuant to § 252(e)(6)) in a case where a party believes that the state commission has made mistakes in applying the pricing provisions of the Act. WorldCom has appealed the Department's UNE rate decision, but only on the ground that the Department should not have accepted VZ-MA's assertion that the TELRIC cost study should assume 100 percent fiber in the feeder portion of the loop.¹⁶⁶ WorldCom has not legally challenged Department findings on any of the other issues discussed in its October 16 comments, including any of the local switching rate decisions. AT&T and the Attorney General, which were both parties to the Department's UNE rate proceeding, have not appealed any of the Department decisions that they now criticize in their comments.

Fifth, notwithstanding the fact that the Department finds that the UNE rates it established in December 1996 are TELRIC-compliant, any remaining dispute about these rates was made moot by the filing and approval on October 13, 2000 of a VZ-MA tariff that lowered switching, transport, and port rates to levels that are effectively the same as the corresponding VZ-NY rates, which have already been approved by the FCC as being within the range that reasonable application of TELRIC principles would produce (an approval sustained on

¹⁶⁶ MCI Telecommunications Corporation, Inc. et al. v. New England Telephone and Telegraph Company d/b/a Bell Atlantic-Massachusetts, et al., No. 98-CV-12375-RCL.

appeal).¹⁶⁷

Many of the commenters, including the DOJ, addressed whether or not the new tariff complies with the FCC's "complete as filed" and other procedural rules for a § 271 investigation. Because the procedural issue is not a checklist-related item, the Department will not comment on it, except to note that the Department has included consideration of the new tariff as part of its Evaluation.¹⁶⁸

C. Checklist Item 3 - Poles, Ducts, Conduits, and Rights-of-Way

The Attorney General argues that several of VZ-MA's policies, relevant to the FCC's inquiry under this checklist item, favor VZ-MA over other carriers. Specifically, the Attorney General states that VZ-MA requires competitors to move their pole attachments within 15 days after VZ-MA requests access to a pole, but that VZ-MA allows itself up to seven and a half months to comply with a competitor's request for access.¹⁶⁹ We disagree with the Attorney General and note that the Attorney General is attempting to compare two entirely different processes, one of which requires a significantly greater amount of time to complete. While VZ-MA requires all licensees to rearrange their existing pole attachments within 15 days of a

¹⁶⁷ See AT&T Corp. v. FCC, 220 F.3d 607, 617 (D.C. Cir. 2000).

¹⁶⁸ D.T.E. Evaluation at 213, 222-223.

¹⁶⁹ Attorney General Comments at 6, citing VZ-MA Application, Appdx. B, Vol. 38, Tab 461, at 13-29 (NECTA Initial Comments); VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4099-4200 (Transcript of Technical Session Held 8/14/00).

request to accommodate the equipment of a new licensee,¹⁷⁰ we note that this rearrangement is a separate process, different from make-ready work to accommodate a new licensee on a pole. In the former process, existing licensees simply need to raise or lower their pole attachment equipment (and 15 days is ample time to perform this function), whereas in the latter function, VZ-MA may need to coordinate the rearrangement of the lines of electric utilities, fire alarm companies, and other attachment owners so that a competitor may gain access to a pole.¹⁷¹

Under VZ-MA's standard licensing agreement, best efforts will be made to have make-ready work completed within 180 days.¹⁷² During May through July 2000, VZ-MA completed make-ready work for pole attachments within 80 days, on average, for CLECs and cable operators compared to 151 days it required to complete make-ready work for itself.¹⁷³ Thus, we conclude that VZ-MA is providing make-ready work on a timely and nondiscriminatory basis.

The Attorney General also contends that VZ-MA requires CLECs to identify their lines on poles but does not identify its own lines.¹⁷⁴ As stated in the Department's Evaluation,

¹⁷⁰ VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4184 (Transcript of Technical Session Held 8/14/00).

¹⁷¹ Id. at 4133.

¹⁷² Id. at 4187.

¹⁷³ VZ-MA Application, Appdx. A, Tab 1, at ¶ 201 (Lacouture/Ruesterholz Decl.).

¹⁷⁴ Attorney General Comments at 6, citing VZ-MA Application, Appdx. B, Vol. 38, Tab (continued...)

VZ-MA does not license itself and so the licensing procedures, including identifying or “tagging” one’s lines, logically would not apply to VZ-MA.¹⁷⁵ There is no need for VZ-MA to tag its own lines since it knows how to identify them.¹⁷⁶ Such a requirement would be pointless formalism.

The Attorney General and RCN-BecoCom, L.L.C. (“RCN”) argue that VZ-MA is able to reserve attachment space for one year but only allows CLECs to reserve space for 90 days.¹⁷⁷ The issue of VZ-MA’s reservation of space was previously addressed in the Department’s Evaluation.¹⁷⁸ We will not repeat that analysis here except to point out that this policy falls within the FCC’s narrow exception permitting a utility with a “bona fide development plan” to reserve space for its core utility services.¹⁷⁹ That exception allows a utility to reserve space for itself for no more than one year, if the utility has a documented,

¹⁷⁴(...continued)

461, at 13-29 (NECTA Initial Comments); VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4099-4200 (Transcript of Technical Session Held 8/14/00); RCN Comments at 10.

¹⁷⁵ D.T.E. Evaluation at 248.

¹⁷⁶ Id.

¹⁷⁷ Attorney General Comments at 6, citing VZ-MA Application, Appdx. B, Vol. 38, Tab 461, at 13-29 (NECTA Initial Comments); VZ-MA Application, Appdx. B, Vol 45, Tab 513, at 4099-4200 (Transcript of Technical Session Held 8/14/00).

¹⁷⁸ D.T.E. Evaluation at 245.

¹⁷⁹ In the Matter of the Local Competition Provisions in the Telecommunications Act of 1996, FCC 99-266, at ¶ 54 (October 26, 1999) (“Reconsideration Order”).

fully engineered plan for such purpose.¹⁸⁰ VZ-MA has such a plan when it pre-allocates space,¹⁸¹ and, therefore, VZ-MA's policy falls within the parameters of the requirements set forth in the Reconsideration Order.

The comments submitted by ALTS raise many of the same issues presented earlier (but not now raised) by New England Cable Television Association, Inc., RCN, and AT&T during our § 271 proceeding concerning checklist item 3.¹⁸² Since the Department already addressed these issues at length in our Evaluation (e.g., the costs and timing of VZ-MA's make-ready procedures, the terms and conditions of VZ-MA's pole attachment and conduit license agreements), there is no need to repeat ourselves here.¹⁸³ However, in response to ALTS' contention about VZ-MA's delays in make-ready work, the Department notes that during the second quarter of 2000, VZ-MA was able to fulfill approximately 90 percent of CLEC requests for access to poles without having to perform make-ready work.¹⁸⁴ In these instances, CLECs gained access to poles, conduits and ducts immediately upon the issuance of a license.¹⁸⁵ ALTS

¹⁸⁰ D.T.E. Evaluation at 245.

¹⁸¹ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at 43 (VZ-MA May Supplemental Comments).

¹⁸² ALTS Comments at 46-48.

¹⁸³ D.T.E. Evaluation at 223-249.

¹⁸⁴ VZ-MA Application, Appdx. A, Tab 1, at ¶ 194 (Lacouture/Ruesterholz Decl.).

¹⁸⁵ Id.

also contends that VZ-MA “proposed meetings with CLEC field staff, but barred CLEC attorneys from attendance.”¹⁸⁶ While ALTS is correct that these licensee workshops were open only to technical staff and not attorneys, ALTS overlooks the fact that the purpose of these workshops was to improve communications between VZ-MA and CLECs, and to provide training and information on VZ-MA’s pole attachment and conduit procedures -- and not a forum for “quiddities” and “quillites.”¹⁸⁷ The workshops resulted in several important modifications to VZ-MA’s licensing procedures, and that progress would likely not have been made had attorneys been present.¹⁸⁸

In its comments, RCN makes allegations concerning VZ-MA’s policy on “boxing” poles,¹⁸⁹ many of which we addressed in our Evaluation.¹⁹⁰ RCN raises for the first time a new allegation – that VZ-MA is the only utility that does not allow for the boxing of poles¹⁹¹ and that the practice of boxing occurs in other Verizon jurisdictions (e.g., Pennsylvania, New

¹⁸⁶ ALTS Comments at 45.

¹⁸⁷ VZ-MA Application, Appdx. A, Tab 1, at ¶ 191 (Lacouture/Ruesterholz Decl.); Hamlet, V.i.97.

¹⁸⁸ Id.

¹⁸⁹ D.T.E. Evaluation at 231 n.708.

¹⁹⁰ Id. at 246.

¹⁹¹ RCN Comments at 13.

Jersey) and throughout the country.¹⁹² Because this allegation was not made during our investigation, we are unable to comment on it. However, we reiterate our findings from the Evaluation that VZ-MA's prohibition on boxing is not an unnecessary restriction on RCN because this policy is designed to protect existing facilities on poles, and that VZ-MA's policy does not unduly affect any particular CLEC or unfairly advantage VZ-MA.¹⁹³

RCN also argues that VZ-MA's policy on boxing violates the FCC's decision in Cavalier Telephone, LLC v. Virginia Electric and Power Company.¹⁹⁴ We addressed the Cavalier decision in our Evaluation in response to RCN's allegations and need not repeat our analysis.¹⁹⁵ In Cavalier, the Respondent boxed its own attachments while prohibiting the Complainant from engaging in the same practice.¹⁹⁶ This is not the case in Massachusetts

¹⁹² Id. at 13-14, Exhibit C (Statement of RCN's Michael Cook explaining that poles in Queens, NY, are boxed), Exhibit D (Statement of RCN's Kevin Comfort explaining that poles in New Jersey are boxed), Exhibit E (Statement of RCN's Fred Fabricious explaining that poles in California are boxed), Exhibit F (Statement of RCN's Marvin Glidewell explaining that poles in Philadelphia, PA, are boxed), and Exhibit G (Statement of consultant Edmund Feloni explaining that boxing is a generally accepted technique).

¹⁹³ D.T.E. Evaluation at 246.

¹⁹⁴ Cavalier Telephone, LLC v. Virginia Electric and Power Company, 15 FCC Rcd 40 (2000) ("Cavalier").

¹⁹⁵ D.T.E. Evaluation at 241-242.

¹⁹⁶ Cavalier at ¶ 19.

because VZ-MA no longer boxes for itself.¹⁹⁷ Moreover, there is no evidence in the record that VZ-MA has selectively enforced this boxing prohibition on RCN.

RCN also asserts that VZ-MA allowed a CLEC to attach to VZ-MA's poles in violation of industry standards and then required RCN to pay make-ready costs to remedy the problem.¹⁹⁸ Other than this vague allegation, however, RCN does not offer any information or documentation to support its argument. For instance, RCN does not identify the CLEC purported to be involved, the approximate date and location of the alleged infraction(s) or the make-ready costs assigned to RCN.¹⁹⁹ In addition, RCN contends that VZ-MA overcharges for make-ready work.²⁰⁰ We addressed VZ-MA's make-ready costs in our Evaluation and found that the costs are accurately broken down into specific categories and that the make-ready costs are sufficiently explained to the licensee.²⁰¹ Moreover, should a CLEC believe that a pole attachment cost is unreasonable, the Department has rules governing complaint procedures whereby a licensee may file an action alleging unreasonable pole attachment rates.²⁰² Thus,

¹⁹⁷ D.T.E. Evaluation at 241-242.

¹⁹⁸ RCN Comments at 10.

¹⁹⁹ VZ-MA Application, Appdx. B, Vol. 38, Tab 459, at 3 (RCN July Supplemental Comments).

²⁰⁰ RCN Comments at 10.

²⁰¹ D.T.E. Evaluation at 247.

²⁰² See 220 C.M.R. §§ 45.00 et seq.

RCN's comments are without merit.

Lastly, the DOJ raised concerns about RCN's allegations that VZ-MA has failed to provide nondiscriminatory access to poles.²⁰³ The DOJ stated that if RCN's allegations are true, this could slow down entry of other facilities-based providers.²⁰⁴ The DOJ also commented that it was not able to fully assess RCN's claims because VZ-MA failed to discuss these issues fully in its application.²⁰⁵

While VZ-MA did not specifically address in its FCC brief each of the allegations raised by RCN,²⁰⁶ VZ-MA has addressed fully RCN's claims in its accompanying attachments filed with the FCC.²⁰⁷ As we stated in our Evaluation²⁰⁸ and in these reply comments, we are satisfied that VZ-MA has conclusively demonstrated that it is providing to RCN, and all other CLECs, nondiscriminatory access to its poles, ducts, conduits, and rights-of-way in accordance with the requirements of § 224.

²⁰³ DOJ Evaluation at 7 n.28, citing RCN Comments at 28-35.

²⁰⁴ Id.

²⁰⁵ Id., citing VZ-MA Brief at 34-35.

²⁰⁶ VZ-MA Application, Brief at 37-38.

²⁰⁷ VZ-MA Application, Appdx. A, Tab 1, at ¶¶ 187-202 (Lacouture/Ruesterholz Decl.), VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at 37- 51 (VZ-MA May Supplemental Comments), VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 63-74 (VZ-MA August Supplemental Checklist Aff.).

²⁰⁸ D.T.E. Evaluation at 239-249.

D. Checklist Item 4 - Unbundled Local Loops

Since there appears to be some disagreement by at least one commenter about the Department's process in D.T.E. 99-271, it is useful to explain again the procedures we followed before responding to the specific arguments raised in the comments on checklist item 4. According to Covad, the data submitted by Southwestern Bell Telephone ("SWBT") in its Texas § 271 application was subject to substantial scrutiny and review by interested parties including "competitive LECs, KPMG, and the Texas Commission."²⁰⁹ Covad contends that, unlike the Texas Commission, not only did the Department "refuse to involve itself in the factual disputes on the record, but [it] ignored Covad's complaint that KPMG had not performed any xDSL data reconciliation." Covad argues that as a result of the Department's and KPMG's inaction (coupled with not having collaborative discussions with VZ-MA), it never had the opportunity to have its objections to VZ-MA's performance properly evaluated.²¹⁰

Covad is incorrect. Like any other participant, Covad was given a meaningful opportunity to challenge VZ-MA's assertions or to substantiate Covad's claims about VZ-MA's performance by providing its own data. With the exception of one VZ-MA study related to longer provisioning intervals resulting from, in VZ-MA's opinion, CLEC requests for manual

²⁰⁹ Covad Comments at 24.

²¹⁰ Id. at 24-25.

loop qualification,²¹¹ all of VZ-MA's justifications for its performance data were addressed in its May and August, 2000, filings and during the August technical sessions. Covad had ample opportunity to enquire, either through discovery or witness examination, VZ-MA's explanations, and to request the supporting data from VZ-MA. That Covad, by its own (in)action, chose not to pursue a VZ-MA argument is not a reflection on the Department's process but, rather, indicates a conscious decision by Covad.²¹²

In addition, KPMG did conduct a thorough and rigorous test of VZ-MA's OSS, including xDSL orders, in Massachusetts.²¹³ Moreover, if by "xDSL data reconciliation" Covad means "xDSL metric replication," the Department did not "ignore" Covad's request. The Department undertook this task of xDSL metric replication on its own initiative, even before VZ-MA made its filing with the FCC, as a direct result of Covad and others having raised it as a concern.²¹⁴

It is unclear to the Department what Covad means by the Department's alleged refusal

²¹¹ See D.T.E. Evaluation at 300 n.947.

²¹² We note that, unlike other participants, Covad chose not to propound any discovery on VZ-MA's May 2000 filing.

²¹³ Covad is incorrect when it states that KPMG reviewed SWBT's data. It did not. Telcordia was the third-party evaluator used by the Texas Commission to aid in its evaluation of SWBT's OSS. In addition, we note that Telcordia's test excluded SWBT's provisioning of xDSL loops. See SBC Texas Order at ¶ 103 n.263.

²¹⁴ See Section II.B.1.b, above, for a discussion of the process and results of this replication.

to involve itself in the factual disputes on the record. In its investigation, the Department attempted to resolve all factual disputes that were brought to our attention. For a significant number of claims Covad made throughout our proceeding, it was unable to produce any supporting data.²¹⁵ In those instances where Covad did produce data, VZ-MA reviewed and persuasively responded to Covad's claims on our record.²¹⁶ Covad did not challenge VZ-MA's accounting of Covad's data nor did it ever seek to "reconcile" its claims with VZ-MA's responses.

The Department scheduled two and a half weeks of technical sessions this summer. Unlike the technical sessions last year, which the Department indicated were designed primarily to educate the Department about VZ-MA's claimed compliance with the checklist, these August technical sessions were for the benefit of the CLEC participants to challenge VZ-MA's claims and to present any factual disputes. Similar to the New York Public Service Commission's ("NYPSC") § 271 proceeding, this last round of technical sessions afforded each CLEC the

²¹⁵ See VZ-MA Application, Appdx. B, Vol. 24, Tab 274 (Covad Response to Record Request 197); VZ-MA Application, Appdx. B, Vol. 28, Tab 363 (Covad Responses to Record Requests 255, 256, 259); Covad Response to Record Request 258; VZ-MA Application, Appdx. B, Vol. 45, Tab 11 (Covad Responses to Information Requests DTE-Covad 4, 6, 7, and 10); VZ-MA Application, Appdx. B, Vol. 45, Tab 14 (Covad Responses to Information Requests DTE-Covad 5 and 11).

²¹⁶ See e.g., VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 206-207 (VZ-MA May Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶¶ 102-103, 144-145 (VZ-MA August Supplemental Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4321-4326 (Transcript of Technical Session Held 8/17/00).

opportunity to present its case of VZ-MA's non-compliance with its § 271 obligations by questioning VZ-MA's experts and KPMG, and by presenting expert testimony of its own. The Department permitted questioning of VZ-MA's experts by the CLECs' experts, as well as by CLEC attorneys, and sustained VZ-MA's objections to CLEC questioning only when the question was obviously not relevant to our proceeding, repetitive or argumentative. Not only did we anticipate using all two and a half weeks, we built into the procedural schedule several additional days in case the proceedings lasted longer than expected. Instead, these technical sessions were completed in eight days (several of which ended early). Covad cannot legitimately argue that it was denied an opportunity to investigate VZ-MA's performance. Ample time and opportunity were provided for CLEC concerns to be aired and thrashed out. Nor should Covad fault the Department for its own inaction during the VZ-MA § 271 investigation.

On a related matter, the DOJ asks that the Department clarify whether the CLECs' opportunity to comment on VZ-MA's assertions related to trouble tickets was limited to the oral argument.²¹⁷ It was not. CLECs were afforded the opportunity to question VZ-MA's experts (and to make data requests of VZ-MA) on this topic and others during the August technical sessions. We reiterate that, but for one VZ-MA study related to the six-day versus nine-day xDSL provisioning interval, the substance of the xDSL information contained in VZ-MA's §

²¹⁷ DOJ Evaluation at 8-9 n.30.

271 application filed on September 22, 2000, was addressed by VZ-MA during our proceeding – and not raised for the first time by VZ-MA during the September 8, 2000, oral argument. Similarly, the DOJ argues that it is in the public interest for VZ-MA to raise its performance measurement concerns before the state commission rather than to raise them for the first time in its § 271 application to the FCC.²¹⁸ In support of this argument, the DOJ cites to Rhythms' FCC comments, in which Rhythms contends that several of VZ-MA's concerns were never addressed at the state level.²¹⁹ Rhythms is incorrect. VZ-MA did raise its concerns with lack of access to CLEC customers and cooperative testing by some CLECs (two of the three issues cited by Rhythms) during our proceeding.²²⁰

1. Hot Cuts

Despite the attention this issue has attracted in other § 271 proceedings before the FCC, only the Attorney General raised concerns about VZ-MA's hot cut performance, and those

²¹⁸ Id. at 13-14.

²¹⁹ Rhythms Comments at 27-28; see also DOJ Evaluation at 14 n.51.

²²⁰ See VZ-MA Application, Vol. 45, Tab 520, at 4286 (Transcript of Technical Session Held 8/17/00) (no access rate is five times higher for CLEC customers than VZ-MA retail customers, clarified later in VZ-MA Response to Record Request 323 as a ten-fold increase in the no access rate from April through June 2000); see also VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 197, 210 (VZ-MA May Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 108 (VZ-MA August Supplemental Checklist Aff.) (indicating that cooperative testing is optional and that one CLEC, Vitts, did not utilize this process). The Department already addressed the third issue mentioned by Rhythms, alleged pre-qualification errors made by CLECs, above.

concerns were limited to the Attorney General’s uncertainty about the status of the hot cut data reconciliation between VZ-MA and AT&T. The Attorney General states that it “remains unclear whether [VZ-MA] is accurately reflecting its hot cut performance,” and “[a]bsent evidence that the hot cut scoring problem raised by AT&T is solved, [VZ-MA] has not demonstrated that it has met all its obligations”²²¹

The Attorney General’s concerns on this point are unfounded. We have already demonstrated in our Evaluation that the hot cut scoring issue is resolved. As we stated in our earlier comments, the Department was unable to categorize or “score” only three of the 36 orders for which AT&T provided documentation. The Department did agree with AT&T that VZ-MA mis-scored six of the 36 orders, but AT&T had earlier claimed that all 36 orders were mis-scored by VZ-MA and that AT&T’s data was “absolutely clear and unambiguous” on that point.²²² While the Attorney General argues that it is unclear whether VZ-MA’s reported hot cut performance is accurate, the Department’s data reconciliation demonstrates that VZ-MA’s reported performance is sufficiently accurate, even for the time period prior to the improved collaboration between VZ-MA and AT&T. As we explained in our Evaluation, since May

²²¹ Attorney General Comments at 7-8.

²²² See D.T.E. Evaluation at 288. In our Evaluation, the Department indicated that AT&T has not presented orders placed this year to support AT&T’s claim that VZ-MA is mis-scoring its hot cut performance. *Id.* at 287. That statement was incorrect. Of the 36 orders AT&T asked the Department to reconcile, 15 were from January and February, 2000.

2000, VZ-MA provides a weekly hot cut “scorecard” to AT&T so that there can be no doubt about whether VZ-MA considers a particular hot cut to have been “made” or “missed.”²²³ We reiterate that there is no need for further hot cut reconciliation and that VZ-MA’s scoring is reliable.

2. xDSL-Capable Loops²²⁴

a. Installation Timeliness

i. Discussion

Covad argues that, in contrast to the performance data presented to the FCC for Texas (where SWBT provided on-time xDSL service for 93.5 percent of its retail customer orders and 92.3 percent of its CLEC customer orders), VZ-MA’s July data show that it provisions xDSL loops to CLECs within the six-day interval only half of the time (but over 80 percent of the time for VZ-MA’s retail xDSL service).²²⁵ According to Covad, this six-day metric was developed through a collaborative process, but VZ-MA attempts to explain away its poor performance by unilaterally changing what it measures, and by producing its own study indicating that this metric is skewed by CLECs selecting VZ-MA’s manual loop qualification

²²³ Id. at 287.

²²⁴ The Department discusses xDSL issues related to VZ-MA’s mechanized loop qualification database and line sharing order flow-through in Sections II.B.1.d and e, above.

²²⁵ Covad Comments at 11-12, citing SBC Texas Order at ¶ 297 n.830.

process.²²⁶

According to Covad, it is impossible for it to refute the VZ-MA study because VZ-MA has refused to provide disaggregated loop data to Covad and other CLECs. Moreover, Covad disputes VZ-MA's contention that approximately 50 percent of CLEC loop orders request manual loop qualification because Covad contends that it uses this process for less than 15 percent of its orders.²²⁷ Lastly, Covad disagrees with VZ-MA's assertion that CLECs miscode their LSRs by marking that an order is to be manually qualified when it is not. Without any record information provided by VZ-MA, Covad states that it is difficult to respond to VZ-MA's miscoding contention.²²⁸

The Department is not persuaded by Covad's attempt to compare one provisioning performance metric in SWBT's § 271 application, Percent SWBT Caused Missed Due Dates, with an altogether different VZ-MA provisioning metric, Percent Completed in 6 Days (1-5 lines). The appropriate "apples to apples" comparison would be the Percent SWBT Caused Missed Due Dates with VZ-MA's Percent Missed Appointment, which, as we noted in our Evaluation, captures any order that, because of VZ-MA's fault, was not completed by the due

²²⁶ Covad Comments at 12-13, citing metric PR-3-10.

²²⁷ Id. at 13-14.

²²⁸ Id. at 14.

date to which VZ-MA committed.²²⁹ In July, for example, VZ-MA met 96.6 percent of its installation appointments for CLEC xDSL orders and 97.96 percent of its own retail xDSL orders. In July 2000, VZ-MA met more of its due dates for xDSL service (for both CLECs and itself) than did SWBT in the month cited by Covad (March 2000).²³⁰

As we mentioned in our Evaluation, VZ-MA did not present in D.T.E. 99-271 the results of its study about the effect of pre-qualified versus manual loop qualification orders on its average interval metrics. Therefore, we will not comment on the substance of this study nor Covad's criticism of it. Covad argues several times in its comments that it is unable to refute VZ-MA's performance claims because VZ-MA has failed to provide Covad and other CLECs with CLEC-specific data for Massachusetts. Until we read Covad's FCC comments, we were unaware that this lack of CLEC-specific data posed a hindrance to Covad because Covad never raised this issue during our proceeding. Indeed, the only requests made to VZ-MA for CLEC-specific information for non-hot cut loops during this year's § 271 proceeding came from the Department; and we heard nothing about the matter from Covad until its October 16 comments.²³¹

Like Covad, Rhythms also argues that VZ-MA's failure to provide carrier-specific

²²⁹ D.T.E. Evaluation at 260-261.

²³⁰ Covad Comments at 11; D.T.E. Evaluation at 300 n.949.

²³¹ VZ-MA Application, Appdx. B, Vol. 34c, Tab 443 (VZ-MA Response to Information Request DTE 5-13); VZ-MA Application, Appdx. B, Vol. 45, Tab 520 at 4320-4321 (Transcript of Technical Session Held 8/17/00)

reports is a serious problem and questions how VZ-MA will be able to calculate its performance for individual CLECs each month pursuant to the Performance Assurance Plan (“PAP”).²³² Moreover, Rhythms contends that the information provided by VZ-MA to support its claim of excellent on-time performance for xDSL loops fails to account for VZ-MA’s practice of asking CLECs to re-submit their LSRs if VZ-MA is unable to meet the established due date. According to Rhythms, this VZ-MA request restarts the clock and, thus, overstates VZ-MA’s on-time provisioning record.²³³

In addition, Rhythms argues that VZ-MA’s claim that the CLEC practice of requesting manual loop qualifications adversely affects its performance results is misleading. According to Rhythms, it must occasionally use this manual process because VZ-MA’s mechanized database is not populated with all the necessary information in order for Rhythms to determine whether it can provide service to a particular customer.²³⁴ Rhythms also states that VZ-MA has not developed a pre-order interface to allow CLECs to submit manual loop qualification queries before submitting an order. Therefore, Rhythms contends that CLECs have no choice but to submit an LSR for the actual order to request VZ-MA to perform a manual query.²³⁵

²³² Rhythms Comments at 28-29.

²³³ Id. at 30, citing VZ-MA Application, Appdx. A, Tab 3, Attach. M (Guerard/Canny Decl.).

²³⁴ Id. at 34.

²³⁵ Id.

We note that Rhythms, too, failed to raise the issue of CLEC-specific information before the Department.²³⁶ Though Rhythms argues that VZ-MA has refused to provide it with CLEC-specific data, we note that VZ-MA will provide carriers that include the Department's Consolidated Arbitrations performance standards in their interconnection agreements with a copy of their so-called "flat file." This file contains detailed information about that carrier's orders for the previous month. Some carriers, such as AT&T, do receive this file. The Department notes that once our PAP is effective, carriers like Covad and Rhythms (that have chosen not to opt-in to the Consolidated Arbitrations performance standards) will receive carrier-specific data, too. Rhythms also raises the issue of VZ-MA asking it and other CLECs to resubmit their LSRs when it appeared VZ-MA was unable to meet a due date (which, according to Rhythms, overstates VZ-MA's provisioning metrics), for the first time in its FCC comments. Rhythms failed to present this issue before the Department, and has not attempted to quantify the frequency of this alleged VZ-MA practice.²³⁷ Therefore, we are unable to comment upon it.

²³⁶ Rhythms indicates that it and other CLECs requested this information from VZ-MA during the "state proceeding." See id. at 33. However, the Department has no record of any CLEC's (other than AT&T's) request for carrier-specific reports.

²³⁷ The only carrier to make a similar allegation, that VZ-MA asked a carrier to resubmit or supplement a particular order, during our § 271 investigation was AT&T. AT&T only made this claim in the context of hot cuts (specifically, "customer not ready"), which was addressed to the Department's satisfaction by VZ-MA. VZ-MA Application, Appdx. B, Vol. 46, Tab 533 at 4431, 4520-4521 (Transcript of Technical Session Held 8/21/00).

NAS argues that, from January through July 2000, VZ-MA took an average of 16 business days to install NAS's stand-alone xDSL loops (measured from the time the loop is ordered to the time that a working loop is installed).²³⁸ To remedy this problem, NAS proposes several revisions to VZ-MA's provisioning process (e.g., a two-hour window for the VZ-MA technician's installation visit; add a "shorting block or a hardwired loopback at the termination on the end user's premises"; improve the accuracy of the mechanized loop qualification database; agree to cooperative testing).²³⁹ As noted at the beginning of our comments, NAS did not participate in our § 271 proceeding. NAS makes several claims in its FCC comments about VZ-MA's xDSL loop provisioning performance -- claims that the Department is hearing for the first time. Since NAS failed to produce documentation supporting its claims to the Department, we are unable to comment upon the validity of NAS's assertions.

Digital Broadband argues that from June through mid-September, 2000, it received the six-day interval for its xDSL loop orders only 33.8 percent of the time.²⁴⁰ According to Digital Broadband, when VZ-MA's offered due-date exceeded the six-day standard, it did so by a large margin (e.g., 15.8 percent of orders had due dates two weeks beyond the stated interval,

²³⁸ NAS Comments at 2.

²³⁹ Id. at 3-6.

²⁴⁰ ALTS Comments, Melanson Decl. at ¶ 19.

21.5 percent of orders received due dates three weeks beyond this interval).²⁴¹ Because Digital Broadband failed to provide this information to the Department during our § 271 proceeding, we are unable to comment upon it.

Finally, the DOJ asks us to clarify to what extent, if any, we relied upon VZ-MA's studies of plain old telephone service ("POTS") lines to make inferences about VZ-MA's xDSL performance; and newly implemented, but yet unproven, process improvements including the enhanced mechanized database, cooperative testing procedures, and substitutes for copper facilities.²⁴²

ii. Conclusions

We affirm our findings contained in our Evaluation: VZ-MA provisions xDSL loops to CLECs when CLECs request them. While Covad makes much of one provisioning metric, PR-3-10, we find it significant that it does not dispute VZ-MA's assertion that Covad receives loops by the Covad-requested due date. Covad argues that it is unable to refute VZ-MA's assertions with respect to several VZ-MA studies because VZ-MA has refused to provide

²⁴¹ Id. at ¶ 20.

²⁴² DOJ Evaluation at 8 n.30. The DOJ also questioned whether in our conclusions about VZ-MA's xDSL provisioning performance, we relied upon Covad's statement made during the oral argument that its xDSL market share in Massachusetts is greater than VZ-MA's. Id. We did not -- in fact Covad has not provided its xDSL market share in Massachusetts to the Department. However, as indicated in our Evaluation, it is unmistakably clear that CLEC xDSL orders are increasing: from March through June 2000, VZ-MA completed over 7,000 orders for unbundled xDSL loops. By August, that number had increased to over 13,000 orders. D.T.E. Evaluation at 254.

Covad and other CLECs with carrier-specific data. Neither Covad nor Rhythms mentioned any VZ-MA refusal to provide CLEC-specific data in our § 271 proceeding (or in any other Department proceeding). Likewise, the other provisioning-specific complaints raised by Rhythms, NAS, and Digital Broadband were never presented before the Department.

In response to the DOJ's concern that we may have relied upon a VZ-MA study of POTS lines to support our finding that VZ-MA provisions xDSL loops to CLECs when they request them, we note that in its May measurements affidavit, VZ-MA discussed a study of randomly selected xDSL orders from January and February 2000.²⁴³ The Department requested and received the supporting documentation for this study, which indicates that for xDSL orders requiring a dispatch, CLECs miscoded approximately 30 percent of their orders.²⁴⁴ That is, for approximately 30 percent of the orders, CLECs requested longer than the stated interval but neglected to code those orders with an "X" instead of a "W."²⁴⁵ The Department expects this clarification, which we neglected to make explicit in our Evaluation, will resolve any of the DOJ's concerns about any inappropriate reliance on VZ-MA's POTS studies.

²⁴³ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 70 (VZ-MA May Measurements Aff.).

²⁴⁴ VZ-MA Application, Appdx. B, 34c, Tab 443 (VZ-MA Response to Information Request DTE 5-30). In January, CLECs miscoded 28.6 percent of their xDSL orders and in February, CLECs miscoded 32.6 percent of their xDSL orders.

²⁴⁵ See VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 67 (VZ-MA May Measurements Aff.) for additional discussion of the miscoding issue.

The DOJ also sought clarification from the Department about our reliance upon “yet unproven” VZ-MA process improvements (e.g., the enhanced mechanized loop database, cooperative testing procedures, and substitutes for copper facilities).²⁴⁶ VZ-MA unveiled its enhanced mechanized loop qualification database earlier this year. As stated in our Evaluation, to date, VZ-MA has populated this database with over 90 percent of the Massachusetts central offices where there is a collocation arrangement in place.²⁴⁷ While we mentioned that the Department approved VZ-MA’s proposed tariff language for the mechanized database as part of our Phase III Order,²⁴⁸ that does not mean the information contained in the enhanced database (i.e., information beyond a simple “yes/no ADSL-capable”) was not already available to CLECs. It was. The record from our Phase III Order is clear on that point.²⁴⁹ Therefore, to clarify statements made in our Evaluation, VZ-MA’s enhanced mechanized database is not unproven – CLECs have been using this database, with its enhanced capability, for months.

As noted by VZ-MA and Covad, the cooperative testing procedures for xDSL loop provisioning between Verizon and CLECs were established last year as part of the New York

²⁴⁶ DOJ Evaluation at 8 n.30.

²⁴⁷ D.T.E. Evaluation at 292.

²⁴⁸ Id. at 295 n.937.

²⁴⁹ See VZ-MA Application, Appdx. E, Vol. 24, Tab 406, at 488-497 (Transcript of D.T.E. 98-57- Phase III Evidentiary Hearing Held 8/2/00); VZ-MA Application, Appdx. E, Vol. 22, Tab 387 (VZ-MA Response to Information Request DTE 1-31); VZ-MA Application, Appdx. B, Vol. 22, Tab 393 (VZ-MA Response to Information Request DTE 1-35).

collaborative.²⁵⁰ These procedures, which are neither new nor unproven, went uncontested in D.T.E 99-271; thus, we have no record to support “eleventh hour” claims that such cooperative testing is not successful.²⁵¹ Finally, the DOJ is correct that the Department recently approved VZ-MA’s proposed tariffed language on line and station transfers (“LSTs”) and directed VZ-MA to file proposed tariff offerings to facilitate line sharing over fiber-fed loops.²⁵² The Department mentioned these options as reasonable solutions to the “no facilities” situation raised by Covad. While the Department’s action, taken in our Phase III Order, with respect to these options is recent (i.e., directing VZ-MA to perform LSTs upon CLEC request for both stand-alone and line-shared loops), VZ-MA performed LSTs, also known as pair swaps, for xDSL stand-alone loops prior to the issuance of this Order; therefore, this process is also not unproven.²⁵³ Moreover, the Department has no record of complaints about VZ-

²⁵⁰ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 108 (VZ-MA August Supplemental Checklist Aff.); VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4371-4372 (Transcript of Technical Session Held 8/17/00).

²⁵¹ Since Covad raised cooperative, or acceptance, testing in the “loop quality” section of its comments, we address its allegations in Section II.D.2.b, below.

²⁵² D.T.E. Evaluation at 309.

²⁵³ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4357-4358 (Transcript of Technical Session Held 8/17/00); VZ-MA Application, Appdx. E, Vol. 24, Tab 408 (VZ-MA Response to Information Request DTE 2-14). Exhibit F to VZ-MA’s May checklist affidavit indicates that VZ-NY has performed LSTs since at least December 1999 (and possibly as early as July 1999). In the same affidavit, VZ-MA states that it agreed to import into Massachusetts the same policies and procedures determined in the New York DSL collaborative sessions (of which exhibit F is an example). VZ-MA
(continued...)

MA's LST procedures.

The Department's directives with respect to line sharing over fiber-fed loops are untested. In fact, the Department is unaware of any other state commission in a Verizon jurisdiction ordering Verizon to make available similar tariffed offerings.²⁵⁴ In concluding that VZ-MA takes appropriate steps to accommodate CLEC requests for spare copper loops, we did not rely on an as-yet-unfiled tariff. Rather, we were persuaded that VZ-MA uses its best efforts when confronted with a "no facilities" situation.²⁵⁵

b. Loop Quality

i. Discussion

According to Covad, VZ-MA's own data indicate that 44 percent of the loops VZ-MA

²⁵³(...continued)

Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 223-224, Exh. F (VZ-MA May Checklist Aff.). It is possible that Verizon began LSTs in Massachusetts last year, as it did in New York; however, for confirmation of the exact date, the Department recommends that the FCC make this request directly of VZ-MA.

²⁵⁴ On October 19, 2000, VZ-MA filed a motion for reconsideration with respect to our "plug and play," unbundled packet switching directives (arguing instead that it should be permitted to file a proposed tariff in which it deploys, installs, and maintains line cards at remote terminals for CLECs as opposed to CLECs owning such line cards).

²⁵⁵ As noted in our Evaluation, VZ-MA is not required to build copper plant for CLECs. We assume that the DOJ is not advocating such a requirement, which would be an unprecedented prerequisite for § 271 approval. Thus, it is only appropriate to consider what action VZ-MA takes when faced with a "no facilities" situation. Based on our record, we found VZ-MA's response to be adequate and appropriate. D.T.E. Evaluation at 303-304.

provides to Covad are non-functioning.²⁵⁶ Covad disagrees with VZ-MA's contention that CLECs accept loops that do not fit particular technical parameters and then open trouble tickets on those loops. Covad argues that it submits trouble tickets to VZ-MA because the loops VZ-MA provisioned to it do not work. According to Covad, it pre-qualifies its loops through VZ-MA to ensure that the loops its orders will support the xDSL service Covad seeks to offer.²⁵⁷

Covad also disputes VZ-MA's assertion that Covad accepts loops and then files trouble tickets. According to Covad, "[i]f, as [VZ-MA] contends, Covad is accepting loops that don't work, then the acceptance testing process doesn't work"²⁵⁸ Specifically, Covad notes that it has no way of knowing where on the loop the VZ-MA technician is plugging in test equipment during the acceptance testing process, and that if the loop is not tested at the network interface device ("NID"), the entire loop has not been tested and may be faulty.²⁵⁹

The Department is not persuaded by Covad's arguments. First, Covad is incorrect when it states that "at least 44% of the loops [VZ-MA] delivered to Covad were non-functioning loops."²⁶⁰ Covad asserts that the importance of this "fact" cannot be overstated. Ironically, it appears that Covad is overstating the facts. According to VZ-MA, Covad

²⁵⁶ Covad Comments at 16.

²⁵⁷ Id. at 17.

²⁵⁸ Id. at 17-18.

²⁵⁹ Id. at 18.

²⁶⁰ Covad Comments at 16.

reported installation troubles within 30 days of an installation (captured by PR-6-01) during April through June, 2000, for **Begin Proprietary*****End Proprietary** of its completed installations.²⁶¹ The figure of “at least” 44 percent of loops with a found “trouble” cited by Covad does not represent 44 percent of all loops provisioned to Covad but, rather, **Begin Proprietary*****End Proprietary** of all loops VZ-MA provisioned to Covad during this three month period. This figure is a far cry from 44 percent of the loops delivered by VZ-MA to Covad.

Second, we note that Covad never raised concerns about the acceptance testing process (e.g., lack of testing at the NID) before us. Third, Covad chose not to challenge statements made by VZ-MA during our § 271 proceeding about CLECs accepting loops that do not support the service the CLEC intends to offer over them. In its comments to the FCC, Covad questions why it would accept a non-working loop,²⁶² but in comments filed with the Department, Covad acknowledged doing just that: “If we do not accept a loop because of a provisioning problem caused by [VZ-MA], the loop falls into a black hole between the RCCC (provisioning center) and the RCMC (maintenance center). . . . The only way we can get a re-dispatch on a bad loop is by accepting a bad loop or a loop that we didn’t even get from the

²⁶¹ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 102 (VZ-MA August Supplemental Checklist Aff.)

²⁶² Covad Comments at 51-52.

RCCC and opening a trouble ticket with the RCMC.”²⁶³ This admission is telling. The Department cannot and will not guess why Covad would accept a loop that does not support the xDSL service it intends to offer over that loop. VZ-MA has posited that CLECs want to “lock in” a loop, a claim we note that no CLEC has challenged.²⁶⁴ While we cannot say -- with any assurance -- why a CLEC would do so, we can say that ascribing the consequence of a CLEC business decision to a purported VZ-MA failure appears unwarranted. Fourth, the Department does not agree that a “trouble” on a loop equals a non-functioning loop, as Covad contends. VZ-MA stated that some CLECs will accept a loop and then open a trouble ticket to have VZ-MA perform work on that loop to meet certain technical specifications (e.g., faster transmission speed).²⁶⁵ Finally, Covad fails to make the obvious connection between CLECs accepting loops they know or should know will not support the level of service they intend to offer and what effect that will have on the number of trouble tickets submitted for newly provisioned loops.

²⁶³ VZ-MA Application, Appdx. B, Vol. 38, Tab 462, at ¶ 65 (Covad Szafraniec/Katzman Decl.). The DOJ sought post-December 1999 information from the Department to support our conclusion that some CLECs accept loops that, absent additional VZ-MA work, will not support the level of service the CLEC seeks to offer. DOJ Evaluation at 8-9 n.30. This Covad declaration, filed with the Department in July 2000, appears responsive to the DOJ’s request.

²⁶⁴ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4353-4354 (Transcript of Technical Session Held 8/17/00).

²⁶⁵ D.T.E. Evaluation, Appdx. F (VZ-MA Response to Record Request 323); see also VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 139 (VZ-MA August Supplemental Checklist Aff.).

Digital Broadband argues that during August through September, 2000, 19.5 percent of Digital Broadband's xDSL loop orders passed the initial remote cooperative testing at the time of loop turnover but did not pass subsequent testing when Digital Broadband performed the installation at the customer premises.²⁶⁶ According to Digital Broadband, there are several possible explanations for this occurrence: a resistive or voltage fault, or VZ-MA alteration of the loop subsequent to the initial cooperative testing and before the time of installation.²⁶⁷ Again, Digital Broadband is making these claims for the first time in its comments to the FCC. The Department is unable to comment upon these assertions because Digital Broadband has not provided us with any supporting documentation.

ii. Conclusions

In its comments to the FCC, Covad dramatically overstates the number of its loops that experience troubles within 30 days of provisioning. The accurate number, provided above, is a fraction of the 44 percent it claims and is not indicative of discriminatory behavior by VZ-MA. Covad's complaint of a "broken" acceptance testing process comes too late for the Department's consideration. In addition, statements made by Covad's experts before us contradict the position it has taken before the FCC (i.e., it does not accept loops that would not support the level of xDSL service it intends to offer). Finally, Digital Broadband made claims

²⁶⁶ ALTS Comments, McMillan Decl. at ¶ 7.

²⁶⁷ Id. at ¶ 10.

about the inadequacies of VZ-MA's acceptance testing process. Unfortunately, it decided not to make these claims in our forum; thus, we are unable to render any recommendation as to their validity.

In its evaluation, the DOJ notes that several CLECs deny that they are improperly accepting loops but, instead, attribute fault to VZ-MA.²⁶⁸ In support of these allegations, the DOJ cites to Covad's, Digital Broadband's, NAS's, and Rhythms' FCC comments.²⁶⁹ For the reasons provided above, we do not afford any weight to Covad's or Digital Broadband's allegations. Moreover, as mentioned earlier, NAS chose not to participate in our proceeding; thus, like Digital Broadband, we have no record upon which to make a determination as to the validity of its claims. Lastly, although it had the opportunity,²⁷⁰ Rhythms did not challenge VZ-MA's assertions regarding a lack of CLEC cooperative testing during our § 271 investigation. Again, we simply do not have the information in our record to make any recommendation with respect to this carrier. In questioning VZ-MA's xDSL performance, it appears to the Department that the DOJ is relying upon CLEC allegations that (a) are being made by D.T.E. 99-271 participants for the first time in their FCC comments, or (b) are being made by CLECs that never sought to participate in D.T.E. 99-271. We base our recommendation upon

²⁶⁸ DOJ Evaluation at 12 n.45.

²⁶⁹ Id.

²⁷⁰ See Rhythms Comments at 32 ("Upon hearing this allegation during the state proceeding, Rhythms verified that it performs acceptance testing")

information contained in our record.

c. Maintenance and Repair

i. Discussion

Covad argues that VZ-MA's July 2000, data show that CLEC customers waited nearly a day longer than VZ-MA's retail customers to have their service restored, and that this level of performance is not comparable to that which the FCC considered to be reasonable in SWBT's § 271 application.²⁷¹ According to Covad, VZ-MA attributes the disparity in performance to "no access" situations (i.e., VZ-MA experiences "no access" issues for only three percent of its retail customers compared to almost 60 percent of CLEC customers).²⁷² Covad agrees that "no access" is a problem and urges a collaborative solution. One such solution, according to Covad, is to provide CLEC customers with a repair appointment window of a few hours, like VZ-MA's retail customers. Covad argues that VZ-MA should provide nondiscriminatory appointment windows, something that Covad claims it has sought unsuccessfully from VZ-MA.²⁷³

Rhythms states that VZ-MA's "no access to CLEC customers" argument is not applicable to Rhythms, which has a network operating center open seven days a week to assist VZ-MA with customer access situations. In addition, Rhythms notes that it does not decline

²⁷¹ Covad Comments at 20.

²⁷² Id.

²⁷³ Id. at 21-22.

Saturday appointments nor does it accept repair times only from 9:00 a.m. to 5:00 p.m.²⁷⁴

Rhythms also argues that VZ-MA inconsistently excludes “no access” situations in calculating its maintenance and repair performance metrics; therefore, it is difficult for Rhythms to determine which metrics are affected by the “no access” issue.²⁷⁵ Finally, Rhythms notes that it was Verizon that initially proposed its performance metrics, which were later evaluated by the collaborative participants and approved by NYPSC and, in turn, by this Department. Given Verizon’s involvement in the metric development process, Rhythms argues that it is unacceptable for VZ-MA now to claim that the metrics are not an appropriate measure of its performance.²⁷⁶

Finally, the DOJ asks that the Department clarify to what extent we relied upon certain of VZ-MA’s process improvements and VZ-MA’s studies of POTS lines in our evaluation of VZ-MA’s maintenance and repair performance.²⁷⁷

ii. Conclusions

Although Covad agrees with VZ-MA that there is a problem with VZ-MA’s access to CLEC customers, Covad failed to mention its proposed solution -- directing VZ-MA to offer CLECs repair appointments lasting just a few hours as opposed to all day -- during our

²⁷⁴ Rhythms Comments at 31.

²⁷⁵ Id. at 31-32.

²⁷⁶ Id. at 34, Williams Decl. at ¶ 31.

²⁷⁷ DOJ Evaluation at 8 n.30.

proceeding. Therefore, although Covad claims it has sought, unsuccessfully, to have the repair appointment window shortened, the Department has no record of this Covad request, nor of VZ-MA's purported refusal to accommodate the request. In addition, Covad's witness testified that he was aware of conversations between Covad and VZ-MA to develop a process addressing the no access situations in the maintenance and repair context, similar to that in place for provisioning (i.e., the ILEC technician calls the CLEC when there is a no access condition so that the CLEC can attempt to obtain access for the ILEC).²⁷⁸ If, in fact, there is such an operational concern, the Department strongly encourages the establishment of such a collaborative process to reduce unnecessary dispatches.

Other than Rhythms indicating in its FCC comments that it accepts Saturday repair appointments and appointments outside of the standard 9:00 a.m. to 5:00 p.m. period, no CLEC has contested VZ-MA's assertion that CLEC behavior adversely affects several of its maintenance and repair metrics (e.g., declining Saturday appointments, inability to isolate accurately a source of trouble on a loop, accepting loops that require additional work by VZ-MA technicians).²⁷⁹

Rhythms argues that it is unacceptable for VZ-MA to contest the very performance measurements it proposed. It is the Department's understanding that the performance metrics

²⁷⁸ VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4376 (Transcript of Technical Session Held 8/17/00).

²⁷⁹ See D.T.E. Evaluation at 314-322 for additional discussion.

are developed and refined in a collaborative manner, under the oversight of the NYPSC, and that this process may require a lengthy period of time.²⁸⁰ It is only natural that not all of the factors outside of Verizon's control would be apparent to Verizon when it proposed certain metrics (e.g., when VZ-MA began offering weekend repair appointments earlier this year, VZ-MA reasonably did not anticipate that many CLECs would reject the offer of a Saturday appointment but prefer instead a Monday appointment). Indeed, VZ-MA indicated that, like CLECs, it resolves approximately half of its UNE-loop trouble reports with a determination of a problem with customer-provided equipment or "no trouble found." However, unlike CLECs, VZ-MA resolves a substantial number of these troubles without a dispatch, and VZ-

²⁸⁰ In its evaluation, the DOJ also argues that VZ-MA has not developed reliable performance measures with associated benchmarks for xDSL services. As support for this contention, the DOJ points to VZ-MA's claim that its xDSL metrics produce "'false positives' (i.e., that due to issues involving definition and implementation, the reported performance appears to be discriminatory but in fact is nondiscriminatory)." DOJ Evaluation at 14-16, see also id. at 8-9 n.30. As we noted above, these measurements are developed through a collaborative process under the supervision of the NYPSC and are self-executing. The DOJ contends that it is unreasonable for VZ-MA to look behind the actual performance numbers in a § 271 proceeding, even when such numbers are distorted by inappropriate CLEC practices. We respectfully disagree. There is no indication in our record that VZ-MA knew at the time the xDSL metrics were being developed in New York that such CLEC practices could skew its performance. Also, as the DOJ is aware, performance measures are not static and may require reevaluation as the BOC and its competitors gain experience with them. In addition, it is our understanding that Verizon cannot unilaterally change the definition or calculation of metrics. That certain xDSL metrics may require modification on a prospective basis should not prevent VZ-MA from explaining its past performance. Finally, while the accuracy of metrics is unquestionably important, determination of checklist compliance ultimately must be based on a thorough assessment of actual performance.

MA expected similar troubleshooting by the CLECs with their customers.²⁸¹ Contrary to Covad's claims (and this deserves emphasis), the Department does not believe CLECs engage in certain practices deliberately to skew VZ-MA's performance data. Rather, as we noted in our Evaluation (and restate here), CLECs simply may have different business plans (e.g., business and not residential customers), and that these differences have a tendency to affect several of VZ-MA's metrics. It was not our intent to ascribe any base or devious motives to any CLEC.

The DOJ requests that the Department explain whether we used VZ-MA's studies of POTS lines to support our conclusion with respect to VZ-MA's maintenance and repair performance.²⁸² The Department assumes the DOJ is referring to our comment that VZ-MA's studies show a CLEC preference for Monday, rather than weekend, repair appointments.²⁸³ While VZ-MA did perform a study of the effect of CLEC-rejected weekend appointments for non-xDSL loops, it undertook the same study for just xDSL loops. In its August supplemental checklist affidavit, VZ-MA stated that "like the experience described above for UNE POTS, other repair measurements for [xDSL] services are similarly affected by the incidence of [data]LECs requesting Monday appointments when [VZ-MA] is offering weekend

²⁸¹ D.T.E. Evaluation at 274-275, citing VZ-MA Application, Appdx. B, Vol. 34a-b, Tab 443 (VZ-MA Response to Information Request DTE 5-20).

²⁸² DOJ Evaluation at 8 n.30, citing D.T.E. Evaluation at 320.

²⁸³ See D.T.E. Evaluation at 320.

appointments. In June, for example, 68% of the repairs from Friday were requested for Monday appointments, while only 11% of the measured ‘retail comparison group’ put over their repair appointments to Monday.”²⁸⁴ It is clear to the Department that this VZ-MA study was of just xDSL, not POTS, loops. Later in its comments, the DOJ questions the accuracy of VZ-MA’s study because “CLECs deny that they avoid weekend repair appointments.”²⁸⁵ Rhythms is the only CLEC that has affirmed, albeit in its FCC comments, that it does indeed accept offered weekend repair appointments from VZ-MA. Therefore, we respectfully disagree with the DOJ’s use (in footnote 43 of the DOJ Evaluation) of FCC comments filed by Covad and NAS (arguing for shortened repair appointments) to question the validity of this VZ-MA study.

The DOJ also has asked the Department to clarify whether we relied upon new and unproven process improvements to support our findings on VZ-MA’s maintenance and repair performance.²⁸⁶ Again, although the exact reference is not specified, the Department gathers that the DOJ is referring to our statement that VZ-MA is providing specialized training to its xDSL technicians and has implemented a maintenance cooperative testing process to assist

²⁸⁴ VZ-MA Application, Appdx. B, Vol. 42, Tab 494, at ¶ 138 (VZ-MA August Supplemental Checklist Aff.). See also D.T.E. Evaluation at 314-315.

²⁸⁵ DOJ Evaluation at 12, citing Rhythms Comments at 31-32, Covad Comments at 20-22, NAS Comments at 3-4.

²⁸⁶ DOJ Evaluation at 8 n.30, citing D.T.E. Evaluation at 315.

CLECs.²⁸⁷ The DOJ is concerned that these VZ-MA steps are unproven. They are not. In its May checklist affidavit, VZ-MA noted that it provides specialized training to its xDSL workforce.²⁸⁸ Although our record does not contain the exact date when such training began, even assuming VZ-MA did not begin the training before May, five months (from May through October 2000) in the realm of advanced services is not an inappropriately brief period of time.²⁸⁹ Finally, cooperative testing for maintenance and repair is also not new. While VZ-MA stated in its May checklist affidavit that it “has instituted a cooperative testing process,” VZ-MA neglected to mention the date it unveiled this process in this filing.²⁹⁰ Again, we note that VZ-MA’s statements in our record indicate this process has been in place for at least five months.²⁹¹

²⁸⁷ D.T.E. Evaluation at 315.

²⁸⁸ VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶ 208 (VZ-MA May Checklist Aff.).

²⁸⁹ Exhibit F to VZ-MA’s May checklist affidavit, indicates that such training of VZ-NY xDSL field technicians occurred no later than December 1999. VZ-MA states in this affidavit that it will adopt in Massachusetts the same operating policies and procedures determined in the New York DSL collaborative sessions, expressly acknowledging the “Bell Atlantic DSL Plan” appended to this affidavit as exhibit F. VZ-MA Application, Appdx. B, Vol. 32a-b, Tab 423, at ¶¶ 223-224, Exh. F (VZ-MA May Checklist Aff.).

²⁹⁰ Id.

²⁹¹ In discussions with Department staff, VZ-MA representatives indicated that the cooperative process for maintenance and repair has been in place in Massachusetts since the beginning of this year. However, the Department was unable to locate this
(continued...)

3. Line Sharing

a. Discussion

ALTS, Covad, Rhythms, and WorldCom argue that VZ-MA fails to meet its line sharing obligations, thus warranting an FCC finding of non-compliance with this checklist requirement. Covad disputes VZ-MA's explanation for the delay in completing the necessary central office work to permit line sharing.²⁹² According to Covad, VZ-MA was to have completed its installation of Covad's splitters²⁹³ by July 6, 2000, and VZ-MA only finished this work on October 10, 2000. Covad asserts that, despite VZ-MA's statements to the contrary, Covad's splitters were sitting in a New Jersey warehouse "awaiting the call" from VZ-MA with delivery instructions.²⁹⁴ In addition, Covad contends that VZ-MA received Covad's splitters in early July; therefore, VZ-MA's installation work should have been completed long before mid-October. Finally, Covad disagrees with the Department's finding that Covad was late in providing splitters to VZ-MA and that it is "unaware of where in the 'record' . . . the

²⁹¹(...continued)

information in our record. If the FCC seeks confirmation of this date (i.e., January 2000), the Department suggests it issue that request directly to VZ-MA.

²⁹² Covad Comments at 28.

²⁹³ Covad has selected VZ-MA's Option C line sharing arrangement, where splitters for Covad's use are placed in VZ-MA's central office space and are maintained by VZ-MA. Id. at 29.

²⁹⁴ Id. at 29-30.

Department finds support for [VZ-MA's] excuse."²⁹⁵

Notably absent from Covad's comments about VZ-MA's installation delays is the date on which Covad notified VZ-MA that splitters for Massachusetts central offices were ready for delivery.²⁹⁶ In another Department proceeding, D.T.E. 98-57-Phase III, Covad acknowledged that it did not even order the splitters for Massachusetts until "late May" and that the splitters were not shipped to the New Jersey warehouse until June; though, again, Covad fails to provide an exact date.²⁹⁷ Covad further states that its splitter vendor had a shortage of splitters because "every non-ILEC carrier in the country that sought to provide line sharing by June 6, 2000 was ordering splitters at the same time and mostly from the same vendor (Siecor)," and "Covad cannot say that . . . either the splitter shortage or the time line that it experienced in May and June is representative of the typical ordering process. As Siecor increases production and splitters from different vendors become [Network Equipment and Building Specifications] compliant, the amount of time that it takes to order and receive splitters should decrease dramatically."²⁹⁸ In response to questioning by the Department, Covad testified that it required "a couple of weeks to get the splitter [Covad ordered] for the initial Bell Atlantic [line sharing

²⁹⁵ Id. at 53.

²⁹⁶ See id. at 29 ("At the outset, Covad had all of the splitters necessary for Massachusetts stored in a New Jersey warehouse awaiting the call from [VZ-MA]") (emphasis added).

²⁹⁷ Appdx. B (D.T.E. 98-57-Phase III Covad Response to Record Request 7).

²⁹⁸ Id.

installations].”²⁹⁹ On the basis of these statements from Covad, it appears that Covad did not have splitters available for Massachusetts until mid-June.³⁰⁰

In its comments, Covad does not dispute VZ-MA’s statement that, by agreement, Covad’s splitters were to have been delivered to VZ-MA for installation on May 27, June 1, and June 8, 2000. Therefore, Covad all but admits to having missed three deadlines because it did not have the necessary equipment; deadlines that, if met, would have enabled it to provide line sharing in Massachusetts several months earlier. Finally, it is unclear to the Department why (even assuming arguendo that Covad’s description of the relevant events is accurate) Covad was not more aggressive in establishing a splitter delivery date for Massachusetts rather than simply allowing its splitters to collect dust in a New Jersey warehouse while “awaiting the call” from VZ-MA.³⁰¹ If Covad had concerns about VZ-MA installation delays, it could have approached the Department to mediate between it and VZ-MA. Covad did not.

²⁹⁹ VZ-MA Application, Appdx. E, Vol. 24, Tab 406, at 406-407 (Transcript of D.T.E. 98-57-Phase III Evidentiary Hearing Held on 8/2/00). The Department is far from certain that Covad’s witness was discussing splitters for Massachusetts and not New York. In fact, it seems likely that Covad was referencing New York, where a line sharing trial began earlier this summer under the auspices of the NYPSC.

³⁰⁰ The mid-June figure may be overly-optimistic given Covad’s statements of splitter shortages and that the amount of time required to receive these Siecor splitters is not representative of the “typical ordering process.” Appdx. B (D.T.E. 98-57-Phase III Covad Response to Record Request 7).

³⁰¹ Though it is clear to the Department that, until July, Covad’s splitters were not in Massachusetts, it is unclear where they were. Elsewhere in Covad’s comments, it indicates that the splitters were sitting in its New York warehouse. Covad Comments at 53.

Covad also argues that, before it can offer line sharing in a state, all of the central offices in “that market” must be equipped with splitters. According to Covad, since its customers are Internet service providers that lack the ability to differentiate between end-users served out of central offices with and without splitters, Covad cannot offer line sharing until VZ-MA completes the installation of splitters in all requested Massachusetts central offices.³⁰² In addition, Covad argues that upon installation, it must still verify the accuracy of the carrier facility assignment information provided by VZ-MA for each splitter.³⁰³

Covad did not raise the issue of being unable to offer line sharing until all of its requested central offices had been equipped with splitters before the Department (either in D.T.E. 99-271 or D.T.E. 98-57-Phase III). Thus, we are unable to comment upon this statement. However, Covad’s argument that VZ-MA missed the FCC’s June 6, 2000, deadline to make line sharing available because Covad was not offering line sharing by that date is undermined by the fact that, by its own actions, Covad had no intention of offering line sharing anywhere in Massachusetts until July 6, 2000, at the earliest.³⁰⁴

³⁰² Id. at 31-32.

³⁰³ Id.

³⁰⁴ According to Covad, VZ-MA was to have completed the splitter installation work for Covad’s requested central offices on June 15, June 29, and July 6, 2000. VZ-MA Application, Appdx. B, Vol. 45, Tab 520, at 4366 (Transcript of Technical Session Held 8/17/00). Therefore, since Covad indicates in its filing with the FCC that it is unable to offer line sharing until all of its requested central offices are splitter-equipped, Covad did not intend to offer line sharing in Massachusetts until July 6, 2000, at the
(continued...)

Finally, Covad mentions difficulties it has experienced in New York in placing line sharing orders for customers that receive dial-tone from resellers or UNE-P providers.³⁰⁵ Again, this issue was not presented before the Department in any proceeding; thus, we are unable to comment on the validity of Covad's assertion.

Rhythms argues that it has experienced recent problems with VZ-MA's central office wiring, asserting, for example, that the wiring was not done or was done incorrectly, or VZ-MA had failed to inventory the wiring or had inventoried the wiring incorrectly.³⁰⁶ In support of these claims, Rhythms cites five line sharing orders out of VZ-MA's Brighton, Massachusetts, central office.³⁰⁷ The line sharing events that Rhythms cites in both its comments and the Williams declaration occurred after our proceeding closed. Therefore, we have no record upon which to base an opinion about the validity of Rhythms' claims.³⁰⁸ Indeed, the Department is not privy to Rhythms' proprietary October 16, 2000, filing made

³⁰⁴(...continued)
earliest. See also Covad Comments at 28.

³⁰⁵ Id. at 32.

³⁰⁶ Rhythms Comments, Williams Decl. at ¶¶ 38-39. Rhythms, unlike Covad, has selected VZ-MA's Option A line sharing arrangement, whereby Rhythms places the splitter in its collocation cage. According to Rhythms, VZ-MA must perform "pre-wiring" before Rhythms may offer line sharing out of VZ-MA's central offices. Rhythms Comments at 36 n.145.

³⁰⁷ Id. at ¶ 38.

³⁰⁸ The Department addresses Rhythms' OSS concerns in Sections II.B.1.d and e, above.

with the FCC.

WorldCom argues that since VZ-MA provides virtually no evidence of its ability to provide line sharing with an unaffiliated data CLEC, and since KPMG did not test VZ-MA's line sharing capability, there is little assurance that VZ-MA can, in fact, provide this service today.³⁰⁹ According to WorldCom, VZ-MA fails to prove that it can or will accommodate line splitting, which allows a data CLEC and a voice CLEC to use the same loop to provide simultaneous data and voice services, respectively.³¹⁰ WorldCom notes that the Department recently held that VZ-MA is not required to provide line sharing between two CLECs, but argues that this Department decision is a clear violation of FCC rules.³¹¹ Finally, WorldCom states that even if VZ-MA had been ordered to permit line splitting, VZ-MA has not demonstrated that it has the procedures in place to provide this combination of elements in a timely manner.³¹²

In previous § 271 Orders, the FCC has recognized that an ILEC should not be penalized for lack of CLEC demand in demonstrating its compliance with the 14-point

³⁰⁹ WorldCom Comments at 61-62.

³¹⁰ Id. at 62.

³¹¹ Id. at 62-63.

³¹² Id. at 64-65.

checklist.³¹³ Specifically, based upon its interconnection agreements and its tariffed offering, the Department agrees with VZ-MA that line sharing is available in Massachusetts, and has been for months. VZ-MA should not be penalized for a lack of CLEC demand for line sharing. The Department expects that its Phase III Order, issued on September 29, 2000, will spur commercial volumes because that Order reduced or eliminated certain line sharing charges and modified or eliminated certain VZ-MA proposed terms and conditions. As mentioned in our Evaluation, the Department finalized its Master Test Plan for KPMG's test of VZ-MA's OSS the day the FCC adopted, but not released, its Line Sharing Order. That KPMG has not evaluated line sharing orders in Massachusetts is not an impediment to finding that a CLEC may obtain line sharing, in compliance with FCC and Department rules, today.

As WorldCom mentions in its comments, the Department expressly ruled that VZ-MA meets its "line splitting" obligations by permitting CLECs to engage in line splitting where the CLEC purchases the entire loop and provides its own splitter. In order for a competing UNE-P carrier to provision both voice and data service over the same loop, it can order the loop portion of the existing UNE-P as an unbundled, xDSL-capable loop terminated to a collocated splitter and DSLAM equipment along with unbundled switching combined with shared

³¹³ See Bell Atlantic New York Order at ¶ 366 ("if no competitor is actually using a checklist item, a BOC must show that it has a concrete and specific legal obligation to furnish the item upon request and be 'presently ready to furnish each item in quantities that competitors may reasonably demand and at an acceptable level of quality.'") (citations omitted).

transport to replace its UNE-P.³¹⁴ The Department's decision was based upon our interpretation of applicable FCC rules and Orders.³¹⁵ We will not comment further upon WorldCom's line splitting claims because, on October 19, 2000, WorldCom filed a motion for reconsideration of our Phase III Order on this very issue. Thus, line splitting remains the subject of an open proceeding.

Like WorldCom, ALTS notes that KPMG did not test VZ-MA's ability to provision line sharing, and contends that this failure to test VZ-MA's line sharing ability means that VZ-MA has not met its burden of proof with respect to checklist item 4.³¹⁶ The Department disagrees with ALTS premise that if KPMG does not test a particular type of order, VZ-MA cannot ipso facto have demonstrated that it is able to provision those orders (e.g., line sharing orders). An OSS test is just one mode of proof -- albeit an important one. It is inaccurate to state that VZ-MA has no line sharing experience. Since March 1999, VZ-MA has offered ADSL service to its retail customers, i.e., Infospeed, over shared lines.³¹⁷ In July, 2000, alone, VZ-MA provisioned almost 4,000 Infospeed orders to Massachusetts customers. Moreover, VZ-MA's

³¹⁴ D.T.E. Evaluation, Appdx. E, at 39, citing SBC Texas Order at ¶ 325 (Phase III Order).

³¹⁵ Id. at 39-41.

³¹⁶ ALTS Comments at 41.

³¹⁷ The FCC noted ILECs' line sharing experience in its Line Sharing Order. See e.g., Line Sharing Order at ¶ 99 (finding that there are substantial operational similarities between the line sharing situation involving an ILEC and a CLEC).

performance with respect to its retail customers is improving even as the volume of orders increases.³¹⁸ In addition, line sharing is such a new requirement that it would be unreasonable to expect that an OSS test on the time-line of the test in Massachusetts would have included an evaluation of line sharing.³¹⁹

b. Conclusions

Several commenters argue that because KPMG did not test VZ-MA's line sharing ability, VZ-MA has not demonstrated that it can provision line sharing orders, thus warranting a finding of non-compliance with checklist item 4. We disagree. As noted above, the Department finalized its Master Test Plan for KPMG's test the day the FCC adopted its Line Sharing Order.

It is clear from at least one CLEC's testimony, Covad's, that it did not intend (nor was it prepared) to offer line sharing in Massachusetts by June 6, 2000. Recognizing that each CLEC operates under its own business plan and timetable, the Department does not criticize

³¹⁸ D.T.E. Evaluation, Appdx. E, at 51 (Phase III Order). VZ-MA's data show that in April, 2000, it required an average of 8.76 days to provision 2,423 Infospeed orders (not requiring a dispatch). By July, 2000, it provisioned 3,742 Infospeed orders in just 4.70 days, on average. To ensure parity of line sharing provisioning performance, the Department directed VZ-MA to provision CLEC line sharing orders at the shorter of five business days (initially) or the shortest average interval that VZ-MA has achieved by September 29, 2000. Id.

³¹⁹ See SBC Texas Order at ¶ 321 (stating that, as with those parts of the UNE Remand Order's revised Rule 319 that were not in effect when SBC filed its § 271 application, it also would be unfair to require SBC to comply with the Line Sharing Order, where the implementation deadline of that Order was after SBC filed its application).

carriers for not seeking to provide line sharing in Massachusetts as quickly as permitted under FCC rules. However, it does not follow that simply because some CLECs chose not to offer line sharing by June 6, 2000, that VZ-MA has failed somehow to meet its line sharing obligations. Department-approved interconnection agreements that provide for line sharing were in effect by June 6, 2000, and VZ-MA had indicated that the rates, terms, and conditions in its proposed line sharing tariff, filed with the Department on May 5, 2000, would be made available to CLECs pending the conclusion of the Department's Phase III investigation.

E. Checklist Item 5 - Unbundled Local Transport

1. Discussion

ALTS submitted a declaration from Digital Broadband containing allegations about VZ-MA's untimely provisioning of transport orders, frequently changed FOC dates, and failure to provision functioning interoffice facilities.³²⁰

2. Conclusions

Neither ALTS nor Digital Broadband raised transport issues during the Department's § 271 investigation, thus the Department has not had the opportunity to investigate Digital Broadband's claims or request that VZ-MA respond. Even assuming that the problems recounted in the Landers declaration occurred as described, the low number of transport complaints raised during our investigation suggests that transport provisioning problems, if any,

³²⁰ ALTS Comments, Landers Decl. at ¶ 11.

are not systemic.

For the reasons discussed above and in our Evaluation, the Department recommends that the FCC accord little weight to transport comments filed by ALTS and Digital Broadband, and that the FCC find that VZ-MA has satisfied the requirements of checklist item 5.

III. PERFORMANCE ASSURANCE PLAN

A. Discussion

Several commenters criticized the Department's PAP (or "Plan"), a summary of which was appended to our Evaluation.³²¹ The Attorney General argues that a higher PAP cap is necessary in order to prevent backsliding and recommends adopting a \$ 278 million dollar cap, which is 70.5 percent of VZ-MA's 1999 total net return.³²² The Attorney General states that the Department should retain authority over the PAP in order to modify the Plan if necessary to include new metrics, revise current metrics and reallocate unused penalties among the components within the PAP.³²³ The Attorney General also suggests that the Department should require VZ-MA to create a Quality Assurance Program to document and verify its data with an internal mechanism to resolve CLEC disputes before bill credits for a given month are due.³²⁴ Finally, the Attorney General argues that the Department should prevent VZ-MA from passing

³²¹ D.T.E. Evaluation, Appdx. A.

³²² Attorney General Comments, Attachment A, at 4.

³²³ Id. at 5.

³²⁴ Id. at 7.

bill credits, penalties, and loss revenue onto the ratepayers.³²⁵

ALTS and RCN contend that the Department should not leave open the opportunity for VZ-MA to recoup bill credits as exogenous costs under its price cap plan.³²⁶ ALTS states that the PAP is weaker than the New York PAP for the reasons identified by AT&T in its September 2000 motion for clarification and reconsideration.³²⁷ RCN recommends that a

³²⁵ Id. at 8.

³²⁶ ALTS Comments at 54; RCN Comments at 27.

³²⁷ ALTS Comments at 56. On September 25 and September 28, 2000, Rhythms and AT&T, respectively, both filed motions for reconsideration in D.T.E. 99-271, requesting that the Department make several changes or additions to the Massachusetts PAP, which was adopted on September 21, 2000. VZ-MA Application, Appdx. B, Vol. 1, Tab 35 (VZ-MA PAP). In its motion, AT&T requested that the Department further conform the Massachusetts PAP to the New York PAP by: adding an express provision for Department authority to reallocate bill credits among and between the PAP and Change Control Assurance Plan (“CCAP”); offering a refund instead of bill credits to CLECs discontinuing service from VZ-MA; eliminating language that was different from the New York PAP concerning statistical scoring of metrics with no volume; including the same language that appears in the New York PAP for the scoring of measurements with a sample size of less than ten; conforming the Domain Clustering rule with the rule in place in the New York PAP; adding references to make the CCAP Massachusetts-specific and thus making it explicit that the Department has enforcement authority; and adding a statement that data reliability issues would be reviewed in subsequent audits and not just the first audit. AT&T also requested that the Department reconsider the PAP’s elimination of the EDI Special Provisions measures that are part of the New York PAP; narrowing the PAP’s Waiver Provision; and offering remedies under the PAP as an alternative, as opposed to a supplement, to the remedies under the Consolidated Arbitrations. See Appdx. C, at 7-28 (AT&T Motion for Clarification and Reconsideration). In its motion, Rhythms requested that the Department add additional xDSL-related metrics and an xDSL Mode of Entry. See Rhythms Comments, Exh. 2, at 9-16, 18-20 (Rhythms Motion for Reconsideration).

(continued...)

senior official at VZ-MA be personally and administratively responsible for the execution of the PAP.³²⁸ Moreover, ALTS notes that the PAP lacks comprehensive xDSL performance measures and fails to address numbering resources.³²⁹

Covad and Rhythms argue that the PAP fails to monitor adequately VZ-MA's xDSL performance and recommend that xDSL be made a separate Mode of Entry under the Plan.³³⁰ Covad states that the Department should increase the penalties under xDSL metrics so that they are equal to the penalties of voice metrics.³³¹ In addition, Rhythms and WorldCom argue that the PAP lacks line sharing metrics.³³²

WorldCom asserts that while an Achieved Flow Through metric is in place under the PAP, VZ-MA has not reported any performance results under this measure and that the

³²⁷(...continued)

On October 17, 2000 the Department issued a request for comments on the motions, with initial comments due October 27, 2000, and reply comments due November 3, 2000. The Department received initial comments from VZ-MA, AT&T, and RCN. With its initial comments, VZ-MA included a revised version of its Massachusetts PAP, which it contends addresses many of the concerns AT&T raised in its motion for reconsideration. See Appdx. D (VZ-MA Proposed Revised PAP).

³²⁸ RCN Comments at 28.

³²⁹ ALTS Comments at 60.

³³⁰ Covad Comments at 47-48; Rhythms Comments at 39.

³³¹ Covad Comments at 48.

³³² Rhythms Comments at 39; WorldCom Comments at 57-59.

Department should ensure VZ-MA can do so.³³³ WorldCom expresses concern that the PAP eliminated the EDI Measures found in the Special Provisions component of the New York PAP.³³⁴ Moreover, WorldCom disagrees that remedies under the PAP should be an alternative (as opposed to a supplement) to the remedies under the Consolidated Arbitrations.³³⁵ WorldCom states that the PAP's waiver process is inadequate because it will delay the payment of bill credits.³³⁶ Finally, WorldCom argues that the PAP does not adequately monitor xDSL measures.³³⁷

The DOJ also raised concerns about the differences between the Massachusetts PAP and the New York PAP, which it argues may compromise the effectiveness of the Massachusetts PAP. These include: (1) the lack of explicit authority by the Department to reallocate bill credits among and between the PAP and the CCAP; (2) the elimination of scoring measurements with a sample size less than ten; (3) no requirement for VZ-MA to issue refunds instead of bill credits where a CLEC no longer operates in Massachusetts; (4) a change in the domain clustering rule; (5) the lack of a Massachusetts-specific CCAP that gives the

³³³ WorldCom Comments at 52.

³³⁴ Id. at 53-54

³³⁵ Id. at 55.

³³⁶ Id. at 56.

³³⁷ Id. at 57-59.

Department clear enforcement authority; and (6) the lack of EDI Special Measures.³³⁸

B. Conclusions

In our Evaluation, the Department noted that the Massachusetts PAP is a reasonable and effective means to deter backsliding. The modifications that VZ-MA recently proposed would, if adopted, eliminate most differences between the Massachusetts PAP and the New York PAP (which were addressed in AT&T's motion for reconsideration) and would further strengthen the PAP. These modifications address most of the concerns of the commenters, including the DOJ, about variations between the Massachusetts PAP and the New York PAP, which commenters had alleged made the Massachusetts PAP less effective than the New York PAP.

Specifically, VZ-MA has proposed to:

- add a provision for Department authority to reallocate bill credits among and between the PAP and the CCAP;
- include the same language that appears in the New York PAP that VZ-MA will issue checks in lieu of outstanding bill credits to CLECs that discontinue taking service from VZ-MA;
- eliminate language that was different from the New York PAP concerning statistical scoring of metrics with no volume;
- include the same language that appears in the New York PAP for the scoring of measurements with a sample size of less than ten;
- conform the Domain Clustering rule with the rule in place in the New York PAP;

³³⁸ DOJ Evaluation at 23 nn.76, 77. The DOJ raised this latter item as a concern because in June and July 2000, VZ-MA experienced difficulties returning BCNs in a timely manner.

- add references to make the CCAP Massachusetts-specific and thus make it explicit that the Department has enforcement authority; and
- add a statement that data reliability issues would be reviewed in subsequent audits and not just the first audit.³³⁹

With respect to other issues such as the elimination of the EDI Special Provisions (a concern also raised by the DOJ),³⁴⁰ the Waiver Provision, the Remedy Provision, and the various xDSL issues raised by Rhythms and the other commenters, the Department recognizes the significance of these issues and will give them serious consideration when reviewing and ruling on the motions for reconsideration of AT&T and Rhythms in D.T.E. 99-271.³⁴¹ However, notwithstanding our on-going review of these motions, we emphasize that the existing PAP in its present form is reasonable and effective to deter backsliding, and we urge the FCC to so find.

The question is not whether the PAP could be tougher. Anything can be made tougher. The real question is whether it is, as written, tough enough to prevent and, if need be, compensate for backsliding. We believe it is tough enough.

Because, as noted above, we believe VZ-MA's proposed modification to its Massachusetts PAP address most of the concerns of the commenters, there is no need for us to

³³⁹ Appendix D (VZ-MA Proposed Revised PAP).

³⁴⁰ DOJ Evaluation at 8-9 n.30, 23 n.77.

³⁴¹ The Department will formally consider these requested modifications after receiving reply comments on the motions for reconsideration, due November 3, 2000.

address such comments individually. We will, however, respond to the few remaining comments not addressed by VZ-MA's modifications or in our Evaluation. Concerning the comments against VZ-MA being allowed to recoup bill credits as exogenous costs under its Massachusetts price cap plan, the Department has an established, adjudicatory process for addressing requests for exogenous cost recovery under Massachusetts law, and it would be premature and inappropriate for the Department to consider this issue now. The question arises under Massachusetts law, and so is of doubtful relevance for resolution under § 271.

Lastly, WorldCom claims that the FCC must ensure that VZ-MA report on the Achieved Flow Through metric under the Special Provisions component of the Plan.³⁴² The Massachusetts PAP, like the New York PAP, currently contains the metric for Achieved Flow Through.³⁴³ Therefore, VZ-MA will be required to report on the Achieved Flow Through metric pursuant to the PAP. In the event VZ-MA does not begin reporting on this ordered metric (the concern raised by WorldCom), VZ-MA will pay the appropriate penalty under the PAP.³⁴⁴

IV. PUBLIC INTEREST ANALYSIS

A. Discussion

Commenters raised several public interest arguments opposing approval of VZ-MA's

³⁴² WorldCom Comments at 52.

³⁴³ VZ-MA Application, Appdx. B, Vol. 1, Tab 35, at Appdx. H (VZ-MA PAP).

³⁴⁴ Id.

application. Sprint and ALTS contend that VZ-MA's application is inconsistent with the public interest because CLECs cannot obtain adequate numbering resources at this time.³⁴⁵ Sprint argues that the shortage of telephone numbers precludes a CLEC from competing against VZ-MA for services requiring new numbers, and that VZ-MA is not affected by the numbering crisis since it has a plentiful supply of numbers.³⁴⁶

Sprint also commented on its interconnection agreement negotiations with VZ-MA. Sprint argued that VZ-MA has taken unreasonable positions during negotiations that have forced Sprint to petition the Department for arbitration, and that forcing Sprint to seek arbitration on issues in which VZ-MA's obligations are unambiguous has delayed and raised the costs of Sprint's effort to enter the Massachusetts local market.³⁴⁷ Sprint maintains that VZ-MA's disregard for its federal and state regulatory obligations is relevant to the FCC's assessment of whether VZ-MA is providing interconnection in compliance with its checklist obligations, whether VZ-MA can be expected to continue to fulfill these obligations, and thus whether competition can be expected to continue and grow if § 271 authority is granted.³⁴⁸

AT&T, AT&T Broadband, and WorldCom comment on the cable telephony market and the status of local residential competition in Massachusetts in their opposition to VZ-MA's

³⁴⁵ Sprint Comments at 5; ALTS Comments at 52.

³⁴⁶ Sprint Comments at 5-6.

³⁴⁷ Id. at 18-19.

³⁴⁸ Id. at 19.

application. AT&T, AT&T Broadband, and WorldCom challenge VZ-MA's characterization of cable providers' current telephony capabilities, and argue that VZ-MA's witness overstated AT&T's cable coverage in Massachusetts as well as AT&T's ability to serve Massachusetts customers with a cable telephony offering today.³⁴⁹ To challenge the statements made by VZ-MA, AT&T and AT&T Broadband provide facts and figures of their own, including the number of cable customers served, market share of cable providers, the extent of AT&T Broadband's cable telephony footprint, and the status of the Merger Agreement between AT&T Broadband and Cablevision.³⁵⁰ In addition, AT&T, AT&T Broadband, and WorldCom noted that upgrading cable networks to provide telephony services is a time and labor intensive process.³⁵¹ Accordingly, AT&T and AT&T Broadband argue that CLECs do not have a meaningful opportunity to compete, and that the majority of Massachusetts consumers have no significant competitive options available to them.³⁵²

WorldCom also maintains that VZ-MA faces de minimis local residential competition in

³⁴⁹ AT&T Comments at 9; AT&T Broadband Comments, Kowolenko Decl. at ¶ 2; WorldCom Comments at 70.

³⁵⁰ AT&T Comments at 9-11; AT&T Broadband Comments, Kowolenko Decl. at ¶¶ 4-6.

³⁵¹ AT&T Comments at 11; AT&T Broadband Comments, Kowolenko Decl. at ¶ 5; WorldCom Comments at 70-71.

³⁵² AT&T Comments at 2; AT&T Broadband Comments, Kowolenko Decl. at ¶ 9.

many parts of Massachusetts.³⁵³ WorldCom argues that CLEC residential customers amount to less than three percent of the three million residential lines served by VZ-MA at the end of 1999.³⁵⁴ WorldCom attributes the lack of residential competition in Massachusetts to UNE pricing, and argues that cable telephony and resold services do not provide broad-scale competition within the Massachusetts' residential market.³⁵⁵ Finally, WorldCom argues that granting VZ-MA's application will not force CLECs into competing in the local residential market in Massachusetts to protect their long-distance base.³⁵⁶

B. Conclusions

The Act vests the public interest judgement solely in the FCC, not the Department. The Department's role under § 271 of the Act is to evaluate VZ-MA's compliance with the 14-point checklist. Accordingly, we did not develop an extensive record on the public interest aspect of VZ-MA's application. In our evaluation, the Department expressed the opinion that approval of VZ-MA's application was consistent with the public interest.³⁵⁷ The comments filed in opposition to VZ-MA's application do not persuade us otherwise.

We are not in a position to respond to most of the arguments mentioned above. We

³⁵³ WorldCom Comments at 67.

³⁵⁴ Id.

³⁵⁵ Id. at 69-72.

³⁵⁶ Id. at 72-73.

³⁵⁷ D.T.E. Evaluation at 409-413.

would, however, comment at length only on Sprint's numbering resources complaint. While Sprint is correct that there is a shortage of available exchange codes in Eastern Massachusetts, this shortage is only temporary. In April 2001, four new overlay area codes will be fully implemented in the four existing area codes, creating a plentiful supply of numbers. At the same time, the Department is pursuing additional authority from the FCC to implement thousand-block number pooling in the new overlay area codes so that numbering resources are not prematurely exhausted. The Department is also taking preventative steps to ensure that Area Code 413 number resources remain plentiful in the western part of the state, by investigating relief measures, should relief prove necessary, and by seeking comprehensive code conservation authority from the FCC for that area. Moreover, as Sprint notes, carriers are able to file emergency requests for exchange codes outside of the rationing process where lack of numbers would prevent them from serving customers. Importantly, Sprint has yet to make such a request, despite its claims that the lack of numbering resources has delayed its business plans.

Appendix A

DSL Metrics Replication Summary.xls

		June 2000				July 2000			
Metric Number	Description	Verizon Measurements		DTE Measurements		Verizon Measurements		DTE Measurements	
		Result	Number of Observations	Result	Number of Observations	Result	Number of Observations	Result	Number of Observations
PR-1-01	Average Interval Offered -- Total No Dispatch	6.56	801	6.56	801	5.96	785	5.96	785
PR-1-02	Average Interval Offered -- Total Dispatch	6.96	1422	6.96	1422	6.84	846	6.84	846
PR-2-01	Average Interval Completed -- Total No Dispatch	4.07	151	4.07	151	3.79	198	3.79	198
PR-2-02	Average Interval Completed -- Total Dispatch	7.16	1193	7.16	1193	7.14	694	7.14	694
PR-4-02	Average Delay Days -- Total	3.57	72	3.57	72	3.44	59	3.44	59
PR-4-03	Percent Missed Appointments -- Customer Reasons	12.53	--	12.53	2027	13.19	--	13.19	1736
PR-4-04	Percent Missed Appointments -- VZ Dispatch	3.55	2027	3.55	2027	3.40	1736	3.40	1736
PR-4-05	Percent Missed Appointments -- VZ No Dispatch	NA	--	NA	--	NA	--	NA	--
PR-4-08	Percent Missed Appointments -- Customer -- Late Order Confirmation	0.20	2027	0.20	2027	0.46	1736	0.46	1736
PR-5-01	Percent Missed Appointments -- VZ -- Facilities	2.71	2027	2.71	2027	2.88	1736	2.88	1736
PR-5-02	Percent of Orders Held for Facilities longer than 15 Days	0.00	2027	0.00	2027	0.00	1736	0.00	1736
PR-5-03	Percent of Orders Held for Facilities longer than 60 Days	0.00	2027	0.00	2027	0.00	1736	0.00	1736
PR-6-01	Percent Installation Troubles Reported within 30 Days	6.20	1838	--*	1838	8.46	1465	--*	1465
PR-6-03	Percent Installation Troubles Reported within 30 Days -- Found OK	9.85	1838	--*	1838	10.92	1465	--*	1465
MR-2-02	Network Trouble Report Rate -- Loop	3.08	9458	3.08	9458	2.77	10723	2.77	10723
MR-2-03	Network Trouble Report Rate -- Central Office	0.50	9458	0.50	9458	0.39	10723	0.39	10723
MR-3-01	Missed Repair Appointment -- Loop	18.90	291	18.90	291	19.19	297	19.19	297
MR-4-01	Mean Time to Repair -- Total	44.92	338	44.92	338	45.37	339	45.37	339
MR-4-02	Mean Time to Repair -- Loop	48.63	291	48.63	291	49.78	297	49.80	297
MR-4-03	Mean Time to Repair -- Central Office	21.93	47	21.94	47	14.03	42	14.03	42
MR-4-08	Percent Out of Service longer than 24 Hours	52.94	221	52.94	221	51.05	239	51.05	239
MR-4-09	Mean Time to Repair -- No Double Dispatch	29.32	338	29.32	235	27.82	339	27.83	220
MR-4-10	Mean Time to Repair -- Double Dispatch	81.37	338	81.38	100	78.47	339	78.48	115

*--Complete data not available to calculate numerator for Installation Trouble metrics.

Appendix B

**COVAD COMMUNICATIONS COMPANY
COMMONWEALTH OF MASSACHUSETTS
DTE 98-57 PHASE III**

**Respondent: Michael Clancy
Title: Director-ILEC
Relations
Date: August 11, 2000**

REQUEST: Verizon f/k/a Bell Atlantic-Massachusetts, Inc.

ITEM: BA-RR 7 Do you know -- or, if you don't know here, if you can take it as a record request -- when the splitters were ordered for Massachusetts by your company and when they were delivered, and how that time line fits in with the collocation applications?

RESPONSE: The splitters for Massachusetts were ordered in late May of this year. They were delivered to a Covad warehouse in June of this year. The splitters waited in the warehouse until July 3, 2000, at which time they were shipped to Massachusetts when Covad received the "go-ahead" from Verizon personnel who were installing them.

It is irrelevant "how that time line fits in with the collocation applications." Clearly, the time line for ordering and receiving splitters in May of this year was not representative of the typical time line. After all, every non-ILEC carrier in the country that sought to provide line sharing by June 6, 2000 was ordering splitters at the same time and mostly from the same vendor (Siecor). As a result, Siecor had a shortage of splitters. Covad cannot say that either the splitter shortage or the time line that it experienced in May and June is representative of the typical ordering process. As Siecor increases production and splitters from different vendors become NEBS compliant, the amount of time that it takes to order and receive splitters should decrease dramatically.

There was no “equipment that was ordered with the intention of provisioning another state but then it was then converted to Massachusetts.”

Appendix C

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

New England Telephone and Telegraph Company, d/b/a Bell
Atlantic-Massachusetts - Section 271 of the
Telecommunications Act of 1996 Compliance Filing

D.T.E. 99-271

**MOTIONS FOR CLARIFICATION AND RECONSIDERATION OF AT&T
COMMUNICATIONS OF NEW ENGLAND, INC. REGARDING VERIZON'S REVISED
PERFORMANCE ASSURANCE PLAN**

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COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

New England Telephone and Telegraph Company, d/b/a Bell
Atlantic-Massachusetts - Section 271 of the
Telecommunications Act of 1996 Compliance Filing

D.T.E. 99-271

**MOTIONS FOR CLARIFICATION AND RECONSIDERATION OF AT&T
COMMUNICATIONS OF NEW ENGLAND, INC. REGARDING VERIZON'S REVISED
PERFORMANCE ASSURANCE PLAN**

Introduction

On April 25, 2000, Verizon proposed in this docket a performance assurance plan for implementation in Massachusetts ("April 25 PAP"). After one round of initial comment from other participants, the Department of Telecommunications and Energy ("Department") issued an order on September 5, 2000 ("PAP Order" or "September 5 PAP Order"), ordering Verizon to submit and then be subject to a revised performance assurance plan. The Department intended the revisions to bring the Massachusetts plan more into line with an existing performance assurance plan in New York ("New York PAP"). *See* PAP Order, at 22. On September 15, 2000, Verizon filed a revised performance assurance plan ("Revised PAP" or "September 15 PAP") purportedly in compliance with the Department's PAP Order. The Department approved the September 15 PAP on September 22, 2000 ("September 22 Approval Order" or "Approval Order") as being in compliance with its September 5 PAP Order.

AT&T files this document because Verizon's September 15 PAP is not in compliance with the September 5 PAP Order and further does not satisfy more generally the Department's intent to provide at least as much protection for competition in Massachusetts as in New York. Consequently, the Department should withhold a favorable recommendation on Verizon-MA's Section 271 application at the FCC until the Department receives from Verizon what it ordered and what it intended.

AT&T recognizes that, as a procedural matter, this docket is not an adjudicatory proceeding and that AT&T does not have "procedural rights" in a technical sense. AT&T is not, therefore, seeking to exercise procedural rights or vindicate substantive rights by the filing of the "motions" contained in this document. AT&T recognizes that the Department may lawfully ignore this filing. Nevertheless, AT&T is filing this document because the Department has several interests at stake: (a) a public policy interest in the development of competition in the local exchange market and the minimization of customer disruption; and (b) as the agency responsible for regulating monopoly telecommunications utilities, an interest in seeing that its orders to those utilities are properly interpreted and complied with. Verizon's September 15 PAP compromises both of those interests. This filing (styled as "motions" more as a convention than as a necessity) is intended to explain why.

**Motion To Reconsider and Revoke September 22 Order Approving
PAP As In Compliance.**

AT&T hereby moves that the Department reconsider its September 22 Approval Order. As grounds for AT&T's motion, AT&T states that Verizon's September 15 PAP does not comply with the specific requirements of the Department's PAP Order in that:

- a. The benchmark standards in Verizon's September 15 PAP are not consistent with the C2C performance benchmarks, as required by the Department's PAP

Order (*id.*, at 27);

- b. By altering the –1 offset provision in its September 15 PAP so that it differs from the New York PAP, Verizon has failed to adopt the statistical methodology used in New York, as required by the Department’s PAP Order (*id.*, at 28-29);
- c. Verizon failed to narrow the waiver provision, as required by the Department’s PAP Order (*id.*, at 31); and
- d. Verizon failed to include a Massachusetts-specific Change Control Assurance Plan (“CCAP”), as required by the Department’s PAP Order (*id.*, at 34-35).

Motion To Modify September 5 PAP Order Due To Verizon Misleading Representations.

AT&T hereby moves that the Department modify its September 5 PAP Order and reconsider its September 22 Approval Order accordingly, because certain aspects of the September 5 Order were based on misleading representations made by Verizon. The modifications to the April 25 PAP that the Department ordered in its September 5 PAP Order do not accomplish the Department’s intent of providing the same level of protection for competition that is provided in New York, because the September 5 PAP Order was based on Verizon’s misleading representations regarding the differences between the New York PAP and the April 25 PAP. Verizon’s April 25 filing purported to identify the differences between the plans but did not – in fact – identify many material differences. Verizon’s April 25 filing misled the Department and the participants into believing that there were no other material differences. Had Verizon identified the other differences between the April 25 PAP and the New York PAP, the other participants would have known to propose, and the Department would have known to order, the following additional changes in order to make the Massachusetts and New York PAPs similar:

- a. a method for allowing scoring for small sample sizes;

- b. a provision granting express authority to the Massachusetts Department to reallocate bill credits;
- c. a provision requiring Verizon to issue a check instead of bill credits for CLECs no longer using Verizon's services;
- d. a provision making Verizon's performance regarding the Electronic Data Interface subject to penalties under the "Special Provisions" section;
- e. a provision making Verizon's performance regarding Resale Flow-through subject to penalties under the "Special Provisions." section.

A copy of the current New York PAP, dated as of April 7, 2000, is attached to this pleading for the Department's convenience.

AT&T recognizes that it was theoretically possible for the other parties and the Department to identify these other differences. AT&T further recognizes that Verizon may contend that it did not intend its list of differences in the April 25 PAP to be exhaustive and that it was unreasonable reliance for the parties to rely on its April 25 PAP for a list of the differences when they could have identified the differences themselves. Such an argument, however, would be beside the point, because this docket is not an adjudication between adversaries, where one adversary can take advantage of the weakness of another. At this point, the Department should be interested in accomplishing the public policy objectives that it intended. Verizon's failure to identify all the material differences when its filing may be fairly read as purporting to do that is misleading at best. If Verizon's misleading (whether deliberate or not) list of the differences resulted in a failure to consider the impact of some of the differences, then the right thing to do is to consider them now. When the Department does consider them, AT&T asks that the Department require them to be added to the Massachusetts plan.

Accordingly, AT&T respectfully requests that the Department revoke its Approval Order and

modify its PAP Order to require the five above-listed changes to the September 15 PAP.

Motion To Clarify Certain Ambiguities In The September 5 PAP Order

AT&T also moves for clarification of the Department's September 5 PAP Order. Such a clarification will necessitate changes to the September 15 PAP. As grounds for AT&T's motion, AT&T states that, in Verizon's September 15 PAP, Verizon unilaterally interpreted certain ambiguous provisions of the Department's PAP Order in its favor. The Department should not allow Verizon to determine unilaterally the Department's meaning with respect to ambiguous provisions. An alternative interpretation of those provisions would require the following changes to the September 15 PAP, which AT&T requests that Department order:

- a. The "procedural trigger" should be tripped if any of the sub-caps discussed in Section II below are met;
- b. The PAP should provide for an initial audit of Verizon's raw data and provide for on-going reviews of raw data; and
- c. The PAP as filed on September 15 should be revised to allow for CLEC and Attorney General participation in the annual review.

Motion To Reconsider September 5 PAP Order Regarding the Relationship Between Interconnection Agreement and PAP Remedies

Finally, AT&T moves for reconsideration of the Department's PAP Order and the Approval Order regarding the relationship between the remedies under the interconnection agreements and under the PAP. As grounds for this motion, AT&T states that a decision to make the PAP remedies a substitute for, rather than in addition to, remedies under interconnection agreements substantially undercuts the Department's goal of providing protections that are proportionally the same as those available in New York. If the Department retains the current relationship between interconnection

agreement and PAP remedies, the Department should increase the level of PAP remedies to be proportional to the total exposure Verizon faces in New York from both interconnection agreements and the New York PAP.

For the foregoing reasons, and for the further reasons stated below, AT&T respectfully requests that the Department grant these motions.

Argument.

I. VERIZON’S SEPTEMBER 15 PAP FAILS TO COMPLY WITH THE SPECIFIC REQUIREMENTS OF THE DEPARTMENT’S PAP ORDER.

In its revised PAP, Verizon has ignored key portions of the Department’s PAP Order. Verizon’s so-called compliance filing does not, in fact, comply. At a minimum the Department should require Verizon to comply with the Department’s own order.

_____A. Verizon-MA Ignores The Department’s PAP Order To Incorporate Benchmark Standards Consistent With The New York Carrier-to-Carrier Benchmarks.

In its PAP Order, the Department explicitly stated that “[I]f Verizon has reduced any benchmark standards in its Massachusetts PAP, those standards shall be revised to be consistent with the NY Carrier-to-Carrier performance benchmarks.” PAP Order at 27. Despite this clear and unambiguous statement, Verizon did not make the ordered revisions.

For example, in its “Special Provisions” Section, Verizon purports to make \$13 million dollars in bill credits available for discriminatory hot-cut service. *See* September 15 PAP at 4, 15 & Appendix H, page 3. Specifically, Verizon promises to offer bill credits if it fails in either of two specific hot-cut metrics, PR-4-06 “Missed Appointment - % on Time Performance – Hot Cut” and PR-6-02 “Installation Quality - % Installation Troubles Reported Within 7 Days.” *See* September 15 PAP at 15

& Appendix H, page 3. Despite the Department's specific command, however, Verizon has adopted performance standards for these metrics that are below the C2C standards. For PR-4-06, the C2C standard is 95% on time performance. Under Verizon's PAP, however, Verizon is not penalized for its discriminatory behavior unless its on time performance level falls below 90%. *See id.* Similarly, the C2C standard for PR-6-02 is 2% or fewer installation troubles reported within seven days. Under Verizon's PAP, however, Verizon is not penalized for its discriminatory behavior unless there are installation troubles reported within seven days on at least 3% of orders. *See id.*

Verizon also proposes providing "Special Provisions" credits for various UNE Ordering Performance Measures. *See* PAP at 14 & Appendix H, page 1. Specifically, Verizon promises to provide bill credits if it engages in discriminatory behavior in connection with OR-1-04, OR-1-06, OR-2-04, or OR-2-06. Under the C2C metrics, the performance standard for each of these metrics is 95%. Once again, however, instead of adopting the performance level required by the C2C metrics, Verizon adopts a lower performance level (90%) in violation of the Department's PAP Order. *See id.*; PAP Order at 27.

B. Verizon Failed To Adopt The Same Statistical Scoring And Bill Credit Methodology ("Statistical Methodology") As Used In The New York PAP.

In its April 25 PAP, Verizon had proposed a statistical methodology that was different from that used in the New York PAP. *See*, April 25 PAP, at 11-12. In its September 5 PAP Order the Department rejected the statistical methodology in the April 25 PAP and ordered Verizon to implement the methodology used in the New York PAP. PAP Order, at 28-29. In its September 15 PAP, however, Verizon did not implement the New York PAP methodology.

In its September 15 PAP, Verizon included a footnote that contains a provision that has a serious impact on the PAP and that is not contained in the New York PAP. In footnote three, Verizon states:

If there is no activity in the month after a –1 score is recorded that month will be excluded from the determination whether a –1 is converted to a 0 score and the following months in which there is activity will be used to make this determination. If there is no activity for three months in a row after a –1 score has been recorded, the –1 will be converted into a 0 score.

September 15 PAP, at 9, n.3.

This addition, hidden in a footnote, has a dramatic impact on the PAP. In New York, if Verizon receives a score of –1 for an MOE measure in one month and Verizon does not receive a score of 0 in each of the next two months (either because it receives a score of –1 or –2, *or because there is no activity in that particular measure for the month*), then the score remains a -1 for reporting and penalty purposes. Under the September 15 PAP, however, if Verizon receives a score of –1 in a measure for one month and there is no activity (for example, if CLECs decide not to install additional Verizon services in a particular month because of Verizon’s discriminatory performance in the previous month) for that measure in the next month, Verizon can still have the –1 score adjusted to a 0 if it scores a 0 in the two months after the month for which there was no activity. If there is no activity for the three months following the –1 score, then the –1 score is automatically changed to 0. This is also different from the New York PAP. These differences are explained in more detail in Attachment A. Thus, while the New York PAP has a limited opportunity for Verizon to “earn” back an offset to bill credits with good, actual performance, the September 15 PAP in Massachusetts relieves Verizon of bill credit obligations when Verizon does nothing in the following months.

This newly added provision is also inconsistent with the bill credit payment schedule that Verizon has proposed in its September 15 PAP. In the Department's September 5 PAP Order, the Department ordered Verizon to provide bill credits under the PAP in the same time frame that it is required to provide bill credits under the Consolidated Arbitrations. *See*, PAP Order, at 30-31. In its September 15 PAP, Verizon explained that this was not possible because of the offset provision by which -1 scores could be reduced to 0 scores. *See*, September 15 PAP, at 17. According to Verizon, this provision requires Verizon to hold off on bill credits until the end of the second month after the close of the month under review. *See, id.*

At first glance, this explanation might appear reasonable. The addition of footnote three to the PAP, however, renders this explanation to be entirely inaccurate. Under the new system, created by footnote three of the September 15 PAP, Verizon will not be able to determine the amount due under the PAP until at least the fourth month after the month under review and in some instances not until at least eighth month after the month under review. *See* Attachment A. Thus, due to the addition of footnote three, Verizon's claim that it will be able to provide bill credits after the close of the second month after the month under review is patently false. Attachment A demonstrates this in more detail.

Because this new offset provision is inconsistent with the Department's intent, with the provisions of the New York PAP and with Verizon's own proposal for the timing of its bill credit payments, the Department should reconsider and revoke its Approval Order and require Verizon to implement the same requirement to "earn" back the billing credit offset that is imposed under the New York PAP.

_____ C. Verizon Failed To Narrow The Waiver Provision, As Required In The Department's PAP Order.

In its September 5 PAP Order, the Department directed Verizon to either strike the PAP provision that allowed Verizon to seek a waiver for “unusual” or “inappropriate” CLEC behavior, or propose a more narrowly defined provision in its compliance filing. *See*, PAP Order, at 31. The Department based its decision on its belief that the FCC had sent “a signal to states that future PAPs either should not contain such a provision or should have a more narrowly defined provision.” *Id.*

Verizon's September 15 PAP, however, neither strikes the waiver provision nor proposes a more narrowly defined provision. Instead, Verizon merely provides examples of CLEC behavior that may entitle Verizon to a waiver. *See*, September 15 PAP, at 19-20. Notably, Verizon makes no claim that the waiver provision is in any way limited to the enumerated examples of CLEC behavior, or even to behavior that is similar to the enumerated examples. *See, id.* In no way is this a “more narrowly defined provision,” as required by the Department Order. *See*, September 5 PAP Order, at 31. Because Verizon's September 15 PAP does not comply with either the letter or the spirit of the Department's Order, the Department should reconsider and revoke the September 22 Approval Order.

_____ D. Verizon-MA Ignores The Requirement In The Department's PAP Order To Incorporate A Massachusetts-Specific Change Control Assurance Plan.

The CCAP attached as Appendix I to Verizon's September 15 PAP is inadequate to ensure non-discriminatory performance on the part of Verizon in the area of change control procedures. In its PAP Order, the Department instructed Verizon to create a separate Massachusetts-specific CCAP. *See* PAP Order at 34-35. The Department also set out \$5.28 million as the appropriate amount of

liability that Verizon should face under the CCAP. *See* PAP Order at 35. Instead of submitting a Massachusetts-specific CCAP, however, Verizon merely attached what appears to be the exact CCAP that it had submitted in New York. *See* September 15 PAP, Appendix I. Indeed, Appendix I is even entitled “Change Control Assurance Plan Bell Atlantic – New York” and fails to contain even a single reference to Massachusetts. *Id.* Under the CCAP that Verizon filed in Massachusetts, Verizon must pay *New York* CLECs for non-compliance.

Furthermore, Appendix I discusses the availability of \$25 million in bill credits under the CCAP. *See, e.g.,* Appendix I, page 2. If Verizon is suggesting its willingness to make \$25 million available under the Massachusetts CCAP, AT&T applauds this as a positive first step in the long journey that Verizon must undertake to fix its abysmal change control performance. Indeed, Verizon’s struggles with change control were even noted by KPMG. *See* Comments by AT&T Regarding the July 26, 2000, Draft of KPMG’s OSS Evaluation Report, D.T.E. 99-271 (August 3, 2000) at 26-33.

In summary, the September 15 PAP does not on its face comply with the Department’s PAP Order because Verizon has not implemented the CCAP that the Department ordered in the PAP Order. The Department should reconsider and revoke its September 22 Approval Order and withhold any positive recommendation in connection with Verizon’s FCC application until such time as Verizon complies with the Department’s PAP Order.

II. VERIZON’S APRIL 25 PAP FILING MISREPRESENTED THE WAYS IN WHICH THE APRIL 25 PAP AND THE NEW YORK PAP DIFFER, WITH THE RESULT THAT THE DEPARTMENT DID NOT IDENTIFY ALL THE MODIFICATIONS REQUIRED FOR THE MASSACHUSETTS PAP TO PROVIDE AT LEAST THE SAME LEVEL OF PROTECTION FOR COMPETITION AS THE NEW YORK PAP DOES.

In its April 25 PAP, under a Section entitled “Massachusetts Specific Modifications,” Verizon

opened with the following paragraph:

As outlined above, the proposed Massachusetts PAP is structured and based on the New York PAP. BA-MA's proposal includes *only a select few differences* to reflect Massachusetts-specific conditions and to provide additional incentives to provide excellent service. *The following highlights those differences.*

April 25 PAP, at 7-8 (emphasis supplied). Verizon then purported to set out all of the differences between the New York and Massachusetts PAP. According to Verizon, the differences between the two plans were:

A difference in the statistical methodology purportedly designed to strengthen and simplify the Massachusetts PAP;

A change from payment of bill credits on a monthly basis to payment of bill credits on a quarterly basis;

A change from the New York system that allowed CLECs to recover under both the PAP and Interconnection Agreements ("ICAs") to a system where a CLEC could only recover under one of the two;

The elimination of a Wholesale Quality Assurance Program ("WQAP");

A change from a mandatory annual audit to a system whereby an audit would only take place if the Department determined it to be necessary; and

A clarification of the waiver provisions to clearly identify work stoppage as a ground for filing a waiver.

Since April 25, numerous CLECs, Verizon, and the Department have used this list of six differences between the April 25 PAP and the New York PAP as the basis for determining whether the April 25 PAP would be appropriate in Massachusetts. *See, e.g.*, Hearing Officer's Memorandum Requesting Reply Comments, 99-271, May 10, 2000 ("Please comment upon the Massachusetts-specific modifications proposed by Bell Atlantic to the PAP in effect in New York."). The Department's review of the Verizon PAP was explicitly focused on the effect that these six differences

would have on Massachusetts. *See id.*

At the same time, the Department made clear that the differences between the Massachusetts and New York PAPs were important, because the Department could have confidence in a plan to the extent that it resembled a plan that had already been approved by the FCC. Specifically, the Department stated:

The Verizon Plan is based on an established model that has found favor with both state and federal regulators. As noted above, Verizon's proposed PAP is very closely modeled after the PAP that the NYPSC approved for Verizon in New York and which the FCC found reasonable to prevent backsliding once Verizon entered the long-distance market in New York. More importantly, the Verizon model appears to be working well in practice, as demonstrated by its effectiveness since January 2000 in responding to backsliding in New York.

PAP Order, at 23 (footnote omitted). Moreover, in a later footnote, although the Department noted that the FCC allowed a range of reasonableness for performance assurance plans, the Department clearly did not find it necessary to analyze the Massachusetts proposal to the extent that it otherwise would have, because of its belief that the Massachusetts plan differed from the New York plan in only the six specified ways. The Department stated,

It is not necessary for us to analyze the PAP in detail relative to each FCC criterion since that ground has already been covered by the FCC in finding favor with Verizon-NY's PAP.

Id., at 23, no. 17.

It has become apparent, however, that this list of six differences that Verizon claimed were the only differences between the New York PAP and the April 25 PAP is far from complete. Not surprisingly, the undisclosed differences serve to weaken significantly Verizon's incentive to provide non-discriminatory service to the CLECs. Because the Department's evaluation of Verizon's PAP was

based on Verizon's misleading representation that the only differences between the New York PAP and the April 25 PAP are those listed above, the Department should reconsider its decision to adopt Verizon's PAP.

_____A. Verizon's Omissions Of The Differences Between The April 25 PAP And NY PAP Are Material.

1. Verizon Has Added A New Provision That Eliminates Scoring For Any Measurement With A Sample Size Of Less Than Ten.

In both its April 25 and September 15 PAP filings, Verizon has affirmatively added a sentence in Appendix D that dramatically alters the PAP and radically distinguishes it from its New York counterpart. Appendix D states that, "[I]f the performance for the CLEC is better than Verizon-MA's performance *or the sample size is less than 10*, no statistical analysis is required." *See*, April 25 PAP, at Appendix D, p. 2; September 15 PAP at Appendix D, p. 2 (emphasis added). The same sentence in the New York PAP states "[I]f the performance for the CLEC is better than the BA-NY performance, no statistical analysis is needed." *See* NY PAP at Appendix D, p. 2. Despite the fact that Verizon made a very clear choice to add the phrase "or the sample size is less than 10," Verizon makes no mention of this change anywhere in the list of differences between the New York and Massachusetts PAP that it provided in its April 25, 2000, PAP filing. *See* April 25 PAP at 7-8.

The addition of this language to the Massachusetts PAP is not some mere academic distinction without a difference. Rather, this new language seeks to exclude large areas of measured performance from penalty consequences. This language serves to reduce Verizon's liability for discriminatory treatment. Instead of admitting to this change and advocating for it openly, however, Verizon buried it in a sentence in an appendix and made no mention of it otherwise. *See*, April 25 PAP, at 7-8.

Because the Department and the participants based their respective evaluations of the PAP on Verizon's misleading list of differences, the sample size difference was not identified and ordered correctly. It should be now.

2. The New York PAP Contains A Provision For The Reallocation Of Bill Credits That The Massachusetts PAP Does Not Contain.

The New York PAP gave the New York Public Service Commission ("NYPSC") "the authority to reallocate the monthly distribution of bill credits between and among any provisions of the Plan and the Change Control Assurance Plan." *See*, New York PAP, at 5. Specifically, the New York PAP stated that \$218 million from Mode of Entry, Critical Measures, Special Provisions, and the CCAP are "available for shifting to areas deemed critical during the course of a year." *See id.* This provision is a critical part of the New York PAP, because it gives the NYPSC flexibility to address areas of performance that may need extra attention. For example, if Verizon-NY consistently engages in discriminatory behavior in the UNE MOE, the NYPSC has the explicit authority to increase the monthly liability Verizon faces under the UNE MOE by shifting some of the dollars available under another MOE to UNEs. This allows the NYPSC to isolate and improve trouble areas in New York.

It is important for the Massachusetts Department to have this same flexibility to respond to actual real world occurrences. The elimination of the reallocation provision from the Massachusetts PAP takes away this flexibility. Verizon should have listed it as a material difference. In any event, the Department should require the same provision in Massachusetts.

3. Unlike The New York PAP, The Massachusetts PAP Does Not Contain A Provision That Requires Verizon To Issue A Refund Check Instead Of Bill Credits If A CLEC No Longer Uses Verizon's Services.

In its April 25 PAP filing, Verizon also made no mention of the fact that, for the Massachusetts

PAP, it had eliminated the provision contained in the New York PAP that requires Verizon to issue a check to any CLEC that is owed bill credits but that no longer uses Verizon's services. *Compare*, NY PAP, at 16, to April 25 PAP, at 20-21, and September 15 PAP, at 19. Under both the New York and Massachusetts PAP, if Verizon provided discriminatory service in January and this discriminatory service entitled an individual CLEC to \$100,000 in bill credits, those credits would be credited to the CLEC's February bill. If the CLEC's February bill was less than \$100,000, then the remaining credits would roll over into future months.

The two PAPs differ significantly, however, in a situation where a CLEC that is owed bill credits stops doing business with Verizon (perhaps because Verizon's discriminatory service has driven them out of the market). In such a situation, the New York PAP requires Verizon to issue a check to the CLEC that is no longer doing business with Verizon for the amount of bill credits owed. The Massachusetts PAP, however, has eliminated this provision. *Compare*, NY PAP, at 16, to April 25 PAP, at 20-21, and September 15 PAP, at 19. Thus, under the Massachusetts PAP, Verizon would not have to pay anything to CLECs to which it owes bill credits if they stop using Verizon's services. This might actually have the perverse effect of giving Verizon an incentive to drive its competitors out of business once it owed them bill credits. If the competitor were not around to collect bill credits, Verizon would never have to pay for its discriminatory behavior.

This is yet another major difference between the two plans that Verizon did not list in its April 25 PAP. *See*, April 25 PAP, at 7-8. Verizon's decision to drop this provision from the Massachusetts PAP without drawing attention to it was misleading at best. The Department should now order Verizon to modify the PAP to require refund checks when a CLEC stops ordering additional services from

Verizon.

4. The Massachusetts PAP Eliminates The Electronic Data Interface Special Provisions That Are Contained In The New York PAP.

Verizon's April 25 PAP also failed to inform the Department that Verizon had eliminated the Special Provisions measures for Electronic Data Interface ("EDI") from its Massachusetts PAP. *See*, April 25 PAP, at 7-8. These measurements are included at pages 13-14 of the New York PAP and \$24 million are set aside as potential bill credits for failure to meet the standards for these measurements. *See*, New York PAP, at 13-14. They are nowhere to be found in either Verizon's April 25 PAP or its September 15 PAP.

This was a particularly glaring omission because these were the Special Provisions that were ordered by the FCC and NYPSC due to the systems problems experienced by BA-NY in the Winter and Spring of this year. Even if the Department were to scale the \$24 million that the New York Plan makes available under these measures to adjust for the size of the Massachusetts market (using the same methodology the Department used in setting the overall PAP liability cap) the exclusion of these measures from the Massachusetts PAP has trimmed over \$12.67 million dollars off of Verizon's potential liability for discriminatory performance. Despite the size of this difference, however, Verizon has strongly suggested, if not claimed, that no such change has been made. *See* April 25 PAP at 7-8. The Department should require Verizon to include all the special provision measures. Moreover, the Department should add to Verizon's potential liability in Massachusetts the \$12.67 million Verizon's omission had eliminated. This would bring Verizon-MA's liability exposure in Massachusetts to the same 39.4% of total revenue that Verizon-NY faces, *See*, Tr. Vol. 28 (9/8/00), at 5482.

5. Verizon Has Eliminated Resale Flow-through Metrics From Critical Provisions In The Massachusetts PAP.

Similarly, Verizon has eliminated Resale flow-through metrics from the Special Provisions section of the Massachusetts PAP while claiming that no such change has been made. The New York PAP included a Special Provision for flow-through that included metrics for both UNE flow-through and Resale flow-through. *See* NY PAP at Appendix H, pp. 1-3. In the Massachusetts PAP, however, Verizon has only included the measures for UNE flow-through. *See* April 25 PAP at Appendix H, pp. 1-2; September 15 PAP at Appendix H, pp. 1-2.

6. Verizon Has Changed The Domain Clustering Rule In Several Ways, All Of Which Benefit Verizon.

The Domain Clustering Rule that Verizon included in its April 25 PAP (which is identical to the Domain Clustering Rule in the September 15 PAP) is different in potentially material ways from the Domain Clustering Rule in the New York PAP, although Verizon nowhere makes reference to, or calls attention to, any differences.

The “Domain Clustering Rule” as it appears in the New York PAP is intended to provide a level of extra protection for CLECs. It provides the potential for additional penalties when Verizon’s poor performance is concentrated in any one of four domains: pre-order, ordering, provisioning and maintenance, but not necessarily within a MOE. Although the Domain Clustering Rule included in the Massachusetts PAP does roughly the same thing, *it requires Verizon-MA’s behavior to be worse (i.e., more discriminatory) before it is triggered, and once triggered it provides a lower level of penalties, as compared to the New York Domain Clustering Rule.* Although the language of the two are substantially different (*compare* Appendix E, pages 2-3, in the April 25 and September 15 PAPs,

to Appendix E, page 3, of the New York PAP), the two effects (see italicized language above) of the different language are not immediately obvious. AT&T has performed a detailed analysis in order to determine these effects. However, the full analysis is beyond the scope of this pleading. Instead, AT&T will set forth below an “intuitive” explanation and urges the Department to convene a technical session in order for AT&T’s subject matter experts to explain and provide the full algebraic support.

There are three major differences between the two rules. First, the examples provided in each of the PAPs are different and connote different rules for determining when a metric and its weight will contribute to the amount necessary to “trigger” the Domain Clustering Rule. Under the New York PAP, the weights of a metric for which Verizon scores a –1 will contribute in the same manner as a metric that scores a –2 to triggering the rule *and* to the amount of penalties provided under the rule. Under the Massachusetts PAPs, the weights of a metric for which Verizon scores a –1 will contribute *partially, if at all*, to triggering the rule and to the remedy amount provided under the rule. Verizon must have a score of –2 before the metric contributes the same amount proportionally as the NY PAP. Not surprisingly, the Massachusetts method will systematically produce lower penalty amounts than the New York method. Attached as Attachment B is an example that shows the New York method producing penalty amounts that are 26.7% greater (proportionately) than the Massachusetts method.

Second, Verizon uses a percentage triggering amount in Massachusetts for the Pre-Order domain (75%) that is different from the percentage used in New York (66.7%). *Compare* April 25 and September 15 PAPs, Appendix E at 3, to New York PAP, Appendix E at 3. The effect of this difference is also to require a worse level of performance from Verizon before the Domain Clustering Rule (with its potentially greater penalties) can be activated.

Third, in Massachusetts, Verizon expressly requires the “response time pre-ordering” metrics to all be at the –2 score before the pre-ordering Domain Clustering Rule is activated. *See*, April 25 and September 15 PAPs, Appendix E, at 3. Nowhere does this requirement appear in the New York PAP. Moreover, this requirement is misleading because it suggests that only the “response time pre-ordering” metrics are required to be at –2 before the pre-ordering Domain Clustering Rule is activated. In fact, due to the operation of the rules and as connoted by the example in the Massachusetts PAP, the pre-ordering domain reaches exactly the 75% level under this requirement but since this requirement is absent in the New York PAP many more patterns of failure would be remedied under its pre-ordering Domain Clustering Rule and therefore gives a stronger incentive for Verizon to provide non-discriminatory wholesale service.

AT&T asks the Department to require Verizon-MA to implement and comply with a Domain Clustering Rule that is the same as the one in New York. Nothing in the Department’s orders indicates a desire to change that rule in Massachusetts.

B. Verizon’s Misrepresentation In Its April 25 PAP Of The Differences Between Its April 25 And New York PAPs Require That The Department Reconsider The September 5 Order – An Order That Is In Direct Response To Verizon’s April 25 PAP and Its Misrepresentations.

It is well established that relief may be had from judgments obtained by misrepresentation. *See* Mass. R. Civ. P. 60 (“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons . . . fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party[.]”). Indeed, the Massachusetts Rules of Civil Procedure specifically empower courts to consider setting aside a judgment in cases of fraud, even when the time for filing a motion for relief from

judgment has otherwise passed. *See id.* (“This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court.”)

Although, as the Department has noted on many occasions, this proceeding is not an adjudicatory proceeding, the Department should surely reconsider a decision that was based on a filing that was misleading at best, and deceptive and fraudulent at worse. It can hardly be in the public interest to make a decision based on misleading information, especially where the decision relied upon incomplete information in an area that the Department has stated is important in its consideration, *i.e.*, the differences between the Massachusetts and New York PAPs. When the New York Public Service Commission discovered that it had set UNE switching rates based on affirmative misstatements of New York Telephone (Verizon-NY), it immediately opened a new proceeding to reconsider UNE switching rates, as well as other UNE rates. *See* September 30, 1998 Order Denying Motion To Reopen Phase 1 and Instituting New Proceeding, Cases 95-C-0657, 94-C-0095, 91-C-1174, 98-C-1357. The Department in Massachusetts should do the same.

III. THE DEPARTMENT SHOULD REVERSE VERIZON’S UNILATERAL INTERPRETATIONS OF CERTAIN AMBIGUOUS PROVISIONS IN THE PAP ORDER AND REQUIRE VERIZON TO COMPLY WITH AN INTERPRETATION THAT IS IN THE PUBLIC INTEREST, NOT VERIZON’S PRIVATE INTEREST.

_____A. The Department Should Clarify Its Decision Regarding A Procedural Trigger And Should Specify That An Administrative Proceeding Will Be Triggered If Verizon Reaches Sub-Cap Limits.

AT&T applauds the Department’s decision to adopt a “procedural trigger” designed to lead to an administrative proceeding that will attempt to resolve the underlying service problems when Verizon’s behavior falls below a certain level. *See*, PAP Order, at 25. However, AT&T respectfully

suggests that some clarification of this “procedural trigger” is in order.

The PAP as filed by Verizon does not make clear whether the procedural mechanism is triggered only when Verizon reaches the \$142 million total liability cap, or whether it is triggered if Verizon reaches one of its other myriad liability caps. For example, the mechanism might be triggered if Verizon reaches one of the sub-caps set out on page 4 of its PAP, or if Verizon reaches one of its monthly sub-caps. The Department order that will result from its compliance review of Verizon’s PAP should clarify the Department’s ruling on this important issue.

The policy behind the use of a procedural trigger counsels for a holding that the procedural trigger applies to sub-caps as well as the overall \$142 million total liability cap. The reason for this can be made quite clear with two simple examples. Under the first scenario, Verizon could provide the worst possible service for a full year for Resale, Interconnection Trunks, and Collocation, but avoid even coming close to the \$142 million cap if it provides merely adequate service in the area of Unbundled Network Elements. *See, e.g.*, PAP at 4 & Appendix A. Under the second scenario, Verizon could provide the worst possible service in every possible area for a period of many consecutive months and avoid coming close to the \$142 million cap by providing adequate service in a few areas for a few months. *See generally* PAP.

Under either scenario, and under far less extreme ones, such deficient service on the part of Verizon would likely disrupt service to hundreds, if not thousands, of end-users and could even force some of Verizon’s competitors out of the local market. Yet, Verizon’s clearly anticompetitive performance levels would not trigger the procedural mechanism if the trigger were based only on the overall cap. Thus, the more appropriate approach would be for the procedural trigger to apply if

Verizon reaches any of the sub-caps set out on page 4 of its PAP, or reaches a cap for any particular month.

The Department should also make clear in the PAP that the CLECs are free to seek Department intervention if other extraordinary performance issues arise. The events in New York in the Winter and Spring of 2000 demonstrate the need for such a provision. As the Department is aware, shortly after Verizon-NY received FCC approval to begin offering long-distance service in New York, Verizon-NY's systems experienced severe problems. This resulted in Verizon-NY's inability to process commercially reasonable CLEC order volumes properly. Verizon-NY's severe discriminatory behavior, however, was not picked up by the metrics then in place and therefore would not have tripped any procedural triggers. It was only through the intervention of the NYPSC and the FCC, at the request of the CLECs, that the problem was finally resolved. There should be no doubt that the Massachusetts PAP permits such intervention by the Department, and Verizon's compliance filing should so state.

B. The Department Should Clarify That Its Audit Requirement Must Include Verification Of Verizon's Raw Data, Both Before Section 271 Approval Is Granted And On An On-Going Basis Thereafter.

There has still been no verification of the accuracy of Verizon's raw data. KPMG's report explicitly states that KPMG *did not* attempt to investigate the validity of Verizon's raw data. *See* KPMG Draft Final Report Version 1.3 (August 9, 2000) at 629 ("The accuracy of the raw data itself was not verified, except during the transaction test, where it was only indirectly verified."). This is a particularly important issue in light of the FCC's explicit statement in both its New York

¹ and Texas

² Orders that the verification of the validity of an ILEC's raw data is an essential component of both a performance plan and the FCC's decision to allow an ILEC to enter the long distance services market. *See*, NY 271 Order, ¶ 442; Texas 271 Order, ¶ 429. As the FCC stated in its review of Southwestern Bell Telephone's Section 271 application for Texas, "[B]ecause the Performance Remedy Plan rests entirely on SWBT's performance as captured by the measurements, the credibility of the performance data should be *above suspicion*." Texas 271 Order, at ¶ 429 (emphasis added); *see also*, FCC September 27, 1999, letter to U.S. West, at 2 (stating that any independent third party evaluation should include "an assessment of whether the raw data being collected by the BOC is accurate...").

It is also important to note that Verizon's PAP implies that an examination of data reliability issues will only occur during the first audit and will not occur during subsequent audits. *See*, September 15 PAP, at 23. Due to the importance of testing the credibility of data, however, it is important that an examination of data reliability occur as part of every annual audit. Indeed, continuing review of the reliability of Verizon data is necessary in order to provide the same oversight as that available in New York. *See*, NY 271 Order, ¶ 442. It is only through such a provision that the Department can ensure

¹ *In the Matter of Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, FCC No. 99-295 (released December 22, 1999) ("NY 271 Order").

² *In the Matter of Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, CC Docket No. 00-65, Memorandum Opinion and Order FCC 00-238 (released June 30, 2000) ("Texas 271 Order")

that the quality of Verizon's data remains as high in Massachusetts as it is in New York.

On the current record, the FCC cannot have confidence that the performance data upon which Verizon ultimately relies are valid and cannot have confidence that the PAP that is supposed to ensure Verizon's future performance is based on statistics that accurately measure Verizon's performance. Only after procedures have been established for on-going data reconciliation, such as the procedures developed by the Texas Public Utilities Commission for that state (*see* Texas 271 Order, ¶ 269), will the FCC be confident that the PAP will, indeed, *assure* Verizon's performance. Thus, until a full verification of the validity of Verizon's raw data can take place and until there is a provision that such verification be on-going, the Department should neither accept Verizon's Revised PAP nor provide a positive recommendation in connection with Verizon's FCC application.

_____ C. The Department Should Clarify That CLECs And The Attorney General May Participate In The Annual Review Of The PAP.

Verizon's PAP provides that "each year the Department and Verizon-MA will review the Performance Assurance Plan to determine whether any modifications or additions should be made." *See* September 15 PAP at 22. This language appears to contemplate that *only* the Department and Verizon-MA, and not any CLECs, will be involved in such review. This is inappropriate and the Department should clarify the PAP to allow for participation by CLECs and the Attorney General in the annual review.

The purpose of the annual review is presumably to ensure that the PAP is serving its intended purpose, to ensure that Verizon is continuing to provide non-discriminatory service. If the CLECs are not involved in the annual review, it is highly likely that problems with the PAP will go unaddressed because Verizon will have no incentive to seek changes unless it is Verizon that is being harmed.

Furthermore, the CLECs will have the most intimate knowledge concerning the effectiveness of the PAP. Thus, it only makes sense to include them in the review process. As the public's advocate, the Attorney General should also be included.

IV. THE DEPARTMENT SHOULD RECONSIDER ITS DECISION NOT TO ORDER THE PAP REMEDIES IN ADDITION TO THE REMEDIES UNDER THE INTERCONNECTION AGREEMENTS, BECAUSE THE SIGNIFICANTLY LOWER AMOUNTS AT RISK IN MASSACHUSETTS MAKE FOR A SIGNIFICANTLY WEAKER PLAN.

In adopting the PAP in Massachusetts, the Department set a financial liability cap of \$142 million. *See*, PAP Order, at 24. This figure fell between Verizon's proposed cap of \$100 million and the proposed caps of other participants, such as the Attorney General's \$278 million proposal. *See id.* In reaching the adopted \$142 million figure, the Department placed great emphasis on the fact that \$142 million constitutes 36% of Verizon's total net return for 1999. *See id.*

AT&T believes that it is vital that Verizon-MA face at least the same total potential liability for poor performance that Verizon-NY faces under the remedies contained in both the New York PAP and the New York ICAs. The Massachusetts PAP's \$142 million potential liability figure does not yet compare to Verizon's total exposure in New York today.

3

The Massachusetts PAP ignores an additional element of the total liability at risk in New York which the FCC has pointed to in both its New York 271 Order and its Texas 271 Order. In its review

³ One of the reasons that liability under the two plans is different is a direct result of Verizon's failure to identify in its list of New York-Massachusetts differences an additional \$24 million at risk in New York for special provisions. In New York, Verizon-NY now faces potential PAP liability that is equal to 39.4% of its total net revenues, not 36%. This is because, in March 2000, the New York cap was increased by \$24 million due to the problems that were experienced in New York after Verizon-NY's entry into the long distance market. Verizon's failure to note this as a difference is a material omission in Verizon's filing that has already been discussed above.

of both the New York and Texas applications, the FCC emphasized that the ILEC faces substantial liquidated damages under ICAs *in addition to* PAP remedies. *See*, New York 271 Order, at ¶ 435; Texas 271 Order, at ¶ 424. The FCC responded to criticisms that the PAP liability caps were not “sufficient, standing alone, to completely counterbalance [the ILECs’] incentive to discriminate,” finding that they did not have to be independently sufficient *if* the ILEC faces the possibility of substantial additional liquidated damages for violation of contractual performance standards. *Id.* The same cannot be said about Massachusetts. Given the timing and nature of the development of performance remedies during the *Consolidated Arbitrations*, the remedies under the ICAs in Massachusetts are quite limited by comparison to the contract remedies in New York. Second, and even more determinative, is the fact that under the PAP approved by this Department, the contractual remedies in Massachusetts are applied *in lieu of* instead of *in addition to* the PAP remedies.

4

Thus, to have an amount at risk that is comparable to that which exists in New York, the Department needs to determine the total liability exposure under both the New York PAP and the New York ICAs *combined*, and ensure that a proportionate amount is at risk in Massachusetts. Clearly, the total liability at risk in New York far exceeds 36%, and could be as much as double that. Because of

⁴ In order to implement the Department directive to provide the higher of remedies due under the PAP and remedies due under the *Consolidated Arbitrations* plan, Verizon has had to address the problem that amounts payable for a specific period become final at different times under the two plans and amounts due are payable at different times under the two plans. *See* September 15 PAP at 17-19. While Verizon’s method for reconciling these differences appears fair (assuming that the billing credit offset is applied as prescribed in the New York PAP; *see* discussion in Section I.B. hereof), the language in the PAP could be misleading if quoted out of context. At a minimum, and to the extent that the Commission does not make the PAP and ICA consequences cumulative, AT&T suggests that the following sentence be added to the end of the first full paragraph on page 18: “This interim payment rule only works because a similar process is followed in the second two months of the quarter, so that eventually CLECs will receive for each quarter the greater of the remedies due under the PAP or under the *Consolidated Arbitrations* plan for that quarter.”

these differences, the overall level of liability that Verizon will face in Massachusetts for anti-competitive conduct is proportionally far less than the liability faced by Verizon-NY. As a result, the Department must amend the liability cap in the Massachusetts PAP and make such liabilities cumulative to those in interconnection agreements in order to achieve its goal of creating a level of liability in Massachusetts that is proportional to the level of liability in New York. Alternatively, the Department should set total liability under the Massachusetts PAP at a level commensurate to the combined interconnection agreement and PAP exposure in New York.

V. THE DEPARTMENT CAN CONTINUE TO MAKE CHANGES TO THE PAP EVEN WHILE VERIZON'S SECTION 271 APPLICATION IS PENDING AT THE FCC.

Although Verizon filed an application for Section 271 approval at the Federal Communications Commission ("FCC") on September 22, 2000, such a filing does not cast in stone the performance assurance plan contained in that filing. As the Department is aware, changes were made in the New York PAP during the pendency of Verizon's New York Section 271 application. Verizon filed its New York application on September 29, 1999. Nevertheless, the New York Public Service Commission issued an Order Adopting The Amended Performance Assurance Plan And Amended Change Control Plan on November 3, 1999, in Cases 97-C-0271 and 99-C-0949. In the November 3, 1999 Order, the New York Public Service Commission made substantive changes to the then existing New York PAP, including the addition of a provision that would allow the New York Public Service Commission to reallocate the dollars at risk among any of the provisions in the PAP and CCAP and a change in the definition for metric PR-4-06 (Missed Appointment - % On Time Performance – Hot Cut). Indeed, the changes were ordered to the New York PAP after the New York Public Service Commission filed its evaluation of Verizon's application with the FCC on October 18, 1999.

Moreover, the FCC itself has expressly exempted the performance assurance plan from its policy of requiring that applications be final when filed. *See*, NY 271 Order, at ¶432, n. 1323. In justifying this position the FCC stated as follows:

Because this aspect of our public interest inquiry necessarily is forward-looking and requires a predictive judgment, this is a situation where it is appropriate to consider commitments made by the applicant to be subject to a framework in the future. Accordingly, this is different from our checklist analysis in which we assess present or past compliance by an applicant.

Id.

For these reasons, the Department should not hesitate to improve the Massachusetts PAP even as Verizon's Section 271 application is pending at the FCC. Indeed, the improvements recommended herein would only enhance the prospect of favorable action at the FCC.

Conclusion.

The Department, the Attorney General, Verizon and the CLECs have all worked hard to bring these proceedings to the point where they are today. Although the finish line for this proceeding is in sight, the race is just beginning in the local exchange market. Before Verizon-MA enters the long distance market, there must be a sufficiently adequate PAP in place to ensure that the race in the local exchange market is fair. Because of the importance of assuring future non-discriminatory performance, the Department should not approve Verizon's PAP, or make a favorable Section 271 recommendation, until the following events occur:

- a. The benchmark standards in Verizon's September 15 PAP should be modified to be consistent with the C2C performance benchmarks, as required by the Department;
- b. The Statistical Methodology for calculating bill credits should be made

consistent with that in the New York PAP by eliminating footnote 3 in the September 15 PAP;

- c. Verizon should narrow or eliminate the waiver provision, as required by the Department;
- d. Verizon should include a Massachusetts-specific CCAP, as required by the Department;
- e. Verizon should include a method for allowing scoring for small sample sizes;
- f. Verizon should include a provision granting express authority to the Massachusetts Department to reallocate bill credits;
- g. Verizon should include a provision requiring Verizon to issue a check instead of bill credits for CLECs no longer using Verizon's services;
- h. Verizon should include a provision making Verizon's performance regarding the Electronic Data Interface subject to penalties under the "Special Provisions" section;
- i. Verizon should include a provision making Verizon's performance regarding Resale Flow-through subject to penalties under the "Special Provisions" section.
- j. The Domain Clustering Rule should be modified to operate as it does in New York;
- k. The "procedural trigger" should be tripped if any of the sub-caps discussed in Section II below are met;
- l. The PAP should provide for an initial audit of Verizon's raw data and provide for on-going reviews of raw data;
- m. The September 15 PAP should be revised to allow for CLEC participation in the annual review; and
- n. The September 15 PAP should be revised to ensure that Verizon's total liability exposure under the Massachusetts PAP is the same proportionally as it is under the New York PAP.

WHEREFORE, AT&T requests that the Department grant the motions herein and order

Verizon to make the above listed changes to the September 15 PAP.

Respectfully submitted,

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September 28, 2000

CERTIFICATE OF SERVICE

I hereby certify that I caused a true copy of the above document to be served upon the attorney of record for each other party on September 28, 2000.

ATTACHMENT A

Verizon's September 15 PAP filing contains a provision pertaining to the offsetting of –1 scores on particular measures through good performance in future months. In footnote three of its filing, however, Verizon introduces a substantial new twist on this offset provision that distinguishes it from the offset provision in the New York PAP. The following scenarios detail the effect that Verizon's addition of footnote three will have on the provision of bill credits in Massachusetts. These scenarios also demonstrate differences between the Massachusetts PAP and the New York PAP created by the addition of footnote three.

Scenario 1:

	Month 1	Month 2	Month 3
Verizon Score	-1	0	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's –1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 4. Under the New York PAP, the same result would occur.

Scenario 2:

	Month 1	Month 2	Month 3	Month 4
Verizon Score	-1	0	No Score	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's –1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 5. Under the New York PAP, Verizon's –1 score would remain a –1 score.

ATTACHMENT A

Scenario 3:

	Month 1	Month 2	Month 3	Month 4	Month 5
Verizon Score	-1	0	No Score	No Score	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 6. Under the New York PAP, Verizon's -1 score would remain a -1 score.

Scenario 4:

	Month 1	Month 2	Month 3	Month 4	Month 5
Verizon Score	-1	No Score	No Score	0	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 6. Under the New York PAP, Verizon's -1 score would remain a -1 score.

Scenario 5:

	Month 1	Month 2	Month 3	Month 4	Month 5	Month 6	Month 7
Verizon Score	-1	No Score	No Score	0	No Score	No Score	0

In the foregoing scenario, under the Massachusetts PAP, Verizon's score for Month 1 would be adjusted to a 0 score for the purposes of providing bill credits in Month 8. Under the New York PAP, Verizon's -1 score would remain a -1 score.

ATTACHMENT A

Scenario 6:

	Month 1	Month 2	Month 3	Month 4
Verizon Score	-1	No Score	No Score	No Score

In the foregoing scenario, under the Massachusetts PAP, Verizon's -1 score for Month 1 is adjusted to a 0 score for the purposes of providing bill credits in Month 5. Under the New York PAP, Verizon's -1 score would remain a -1 score.

ATTACHMENT B

Use the V-M example¹.

Say we have a domain with 14 metrics each with weight 10.² Then the total weight is 140. According to the MA rules we take twice this amount and put a minus sign in front³ we get -280.

In the example the aggregated weighted performance score is assumed to be -220. Then the ratio as calculated by V-M is

$$\frac{-220}{-280} = 0.786 \geq 0.750$$

Since this critical ratio (percentage) is greater than 75%, the domain clustering rule overlay is used. That is, the remedy amount is calculated for the whole MOE as if this domain was the whole MOE. This only makes sense if the domain generated dollar amount is greater than the whole MOE dollar amount. If another domain in the MOE had a higher percentage, it would be used instead of the ordering domain.

Now from the lines above table that maps the aggregated score to dollar amount (Table A-3-2), the numbers used to determine the domain clustering score is

$$\cancel{-0.19} \times \cancel{1.0674} \times \cancel{0.19} \times \cancel{1.078} = \cancel{-0.19} \times \cancel{0.374} = \cancel{-0.55}$$

This in turn leads to a remedy amount of **\$1,626,316**.⁴

If we did this according to the NY rules, the answer would depend on how the performance score (-220) was distributed over the 14 measures. The reason is that the NY rule calls for the ratio of the tripped weights to the total weight in the domain to determine the critical percentage. If by tripped weights we also include those metrics with a score -1 as well as a -2, then the results are different. Consider that out of the 14 metrics, each of weight 10, that 11 have a score of -2. This would lead to the aggregated weight of -220 used above, and the remedy would be as above. Now assume that that 8 of the measures had a score of -2 and 6 had a score of -1. This would lead to an aggregated score of -220 as well, and therefore, according to V-M the same remedy. However, if we used the NY rules the answer would differ because in NY the number of tripped measures would be all 14. All the weights had been tripped! Therefore the percentage to use would not be 78.6% but would be 100%. Therefore, the calculated score from the table would be -0.6700. This leads to the maximum remedy

¹ The V-M description incorrectly states that the weight of the ordering domain in the UNE MOE is 140, when it is in fact 210. This has no bearing on the calculation.

² This is my assumption on how the metrics are weighted. It has no effect on how the MA amount is calculated, but does have an effect on how the NY amount would be calculated.

³ The example in the MA description leaves out this minus sign, but it is necessary to the result.

⁴ The hypothetical V-M example has the full MOE score leading to a lesser amount and tacitly assumes that the Ordering domain score is the worst among the UNE domains of this rule.

amount for the MOE of **\$2,060,000**. The difference in this case would be **\$433,684 or 26.7%** more would be paid under the NY rules than the MA rules.

Appendix D

PERFORMANCE ASSURANCE PLAN

VERIZON MASSACHUSETTS

October 27, 2000

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PERFORMANCE ASSURANCE PLAN

I. INTRODUCTION

The Massachusetts Performance Assurance Plan (“Massachusetts PAP”) is a self-executing remedy plan that will ensure Verizon Massachusetts (“Verizon MA”) provides quality wholesale services to competitive carriers after Verizon MA has gained entry into the long distance market pursuant to Section 271 of the Telecommunications Act of 1996. The Massachusetts PAP is in compliance with an Order issued by the Massachusetts Department of Telecommunications and Energy (“Department”) on September 5, 2000. The Change Control Assurance Plan (“CCAP”) contained in Appendix I is also in compliance with the September 5, 2000 Order.

A. The Massachusetts PAP

The Massachusetts PAP has three major components: (1) the metrics used to report performance; (2) the methodology used to determine billing credits, including service segmentation, scoring method, and other rules described in the plan document; and (3) the dollars at risk. Each of these components is summarized below and is discussed in more detail in the following sections and Appendices.

1. Measures and Standards

On January 14, 2000, the Department adopted the New York C2C Performance Measurement Plan for evaluating Verizon MA’s wholesale performance. The C2C measures include hundreds of individual data points that track and report on performance. Some metrics are compared with analogous Verizon retail services to ensure parity of service and others, where no retail analog exists, are reviewed on the basis of absolute standards. As in New York, where

the C2C measures and standards were incorporated into the PAP, the Massachusetts PAP incorporates the same C2C measures and standards.

2. Methodology

(a) Service Segmentation

The Massachusetts PAP includes three service segmentations: Mode of Entry (“MOE”), Critical Measures, and Special Provisions.

The MOE segment measures the overall level of service on an industry-wide basis for each method or mode by which carriers can enter the local exchange market under the Telecommunications Act of 1996, *i.e.* resale, unbundled network elements, interconnection trunks and collocation. Any bill credits generated in any one of these modes are allocated to competitors purchasing those types of services. The MOE component of the Massachusetts PAP is fully described in Section II.C. and in Appendices A and E.

The Critical Measures component measures performance in 12 critical areas that have been identified as most important to the provision of quality service. The Critical Measures are a subset of the measures included in the MOE segment. Additional bill credits will be provided for performance on these measures that fail to meet the standards. This segment provides a mechanism to assure that carriers are receiving non-discriminatory service on an individual basis. The complete list of Critical Measures is enumerated in Appendix B and scoring/credit calculations are in Appendix F.

The Special Provisions segment focuses on a number of measures that are viewed as measuring key aspects of Verizon MA’s performance. This segment establishes targets that Verizon MA must achieve for flow-through, order processing, hot-cuts, Local Service Request confirmations, and reject notices. Verizon MA will provide bill credits to those carriers who

received service below target levels. The Special Provisions measures are described in Section II.E. and Appendix H.

(b) Change Control Assurance

Verizon is also subject to a separate Change Control Assurance Plan (“CCAP”). Change Control is designed to measure Verizon’s performance in implementing revisions to OSS interfaces and business rules that affect CLECs. The Change Control process is common to carriers operating in Massachusetts and New York. Under the Change Control Assurance Plan, \$5.28 million in bill credits will be available to all CLECs in Massachusetts for unsatisfactory performance on four Change Control metrics. Change Control credits are described in Section II. B.2.

(c) Statistical Test

The Massachusetts PAP uses statistical methodologies as one means to determine if “parity” exists between Verizon MA’s wholesale and retail performance. For measures where parity is the standard and a sufficient sample size exists, a “modified z statistic” is used. The statistical methodology is described in Appendix D.

(d) Scoring

Each of the measures within the MOE segment is graded with a 0, -1, or -2 based on the statistical analysis and the magnitude of the its z-statistic for the month. The performance score for each metric is then weighted. These weights were developed to reflect the importance of that metric in determining that markets are open to competition. Critical Measures performance is scored against sliding scales based on the statistical score and the magnitude of the difference between wholesale service and the applicable standards. Special Provisions are scored against absolute standards of performance. Each of the scoring, weighting, and credit distribution processes is contained in Appendices A, B, C, E, and F.

(e) *Self-executing aspects*

Verizon MA will report its performance on the Massachusetts PAP on a monthly basis. Within 30 days of the close of the second month after the month in which performance is being reviewed, PAP credits will be processed for each CLEC. However, if a CLEC has received credits under the *Consolidated Arbitrations* for the same quarter, in an amount greater than credits due under the PAP, no additional credit will be made. See Section II. H. for further explanation. The Massachusetts PAP will go into effect coincident with Verizon's entry into the long distance market in Massachusetts.

3. Dollars at Risk

The structure of the Massachusetts PAP includes three credit categories: Mode of Entry, Critical Measures, and Special Provisions. Each category has a Massachusetts-specific credit schedule and cap which are presented in greater detail in the Appendices. The Massachusetts PAP contains a maximum dollar amount at risk. The total cap for Verizon MA is \$147.28 million which is made up of a Massachusetts PAP cap of \$142M and a CCAP cap of \$5.28 Million. The distribution of dollars is as follows:

	Dollars at Risk (millions)
Mode of Entry	\$41.20
Doubling of MOE	\$41.20
Critical Measures	\$41.20
Special Provisions	
Flow Through	\$5.40
Hot Cut Performance	\$13.00
PAP Total	\$142.00
CCAP	\$5.28
Verizon Total	\$147.28

Conditions for doubling of the MOE dollars at risk are explained fully in Section II.C.2. In addition, there is an additional category for Special Provisions associated with ordering that

provides for an additional \$13.0M, paid from the MOE dollars at risk, if Verizon MA does not meet service standards and has not reached the cap level for MOE. If Verizon MA's performance results in payments that reach the monetary cap, the Department, at its discretion, may open a proceeding to resolve the underlying service problem.

4. Accurate Reporting of Data

The validation of Verizon MA's performance reporting was included as part of the independent, third-party OSS testing conducted by KPMG. Going forward, the Massachusetts PAP reporting of results will be subject to an annual audit. The first audit will begin 6 months after long distance entry.

II. PROVISIONS OF THE PLAN

A. Measures, Methods of Analysis and Standards

1. Measures

The measures and standards in the Massachusetts PAP have been taken directly from the Guidelines for Carrier-to-Carrier (C2C) Performance Standards and Reports developed in New York Case 97-C-0139 and cover the areas of Pre-order, Ordering, Provisioning, Maintenance and Repair, Billing and Network Performance. On January 14, 2000, the Department adopted the New York C2C Performance Measurement Plan for evaluating Verizon MA's compliance with the requirements of Section 271 of the Telecommunications Act of 1996.

2. Methods of Analysis

Verizon MA will use two interrelated methods to monitor wholesale performance to CLECs on the performance measurements. The first method is designed to measure Verizon MA's overall Section 271 performance in four categories that correspond to the methods or modes CLECs use to enter the local exchange market: Resale; Unbundled Network Elements ("UNEs"); Interconnection (Trunks); and Collocation. This is referred to as the Mode of Entry ("MOE") Measurements method, and a total of \$41.2 million in annual bill credits, with potential for doubling per the provisions in Section II.C.2, will be available to CLECs if Verizon MA provides the maximum allowable unsatisfactory performance in all four MOE categories. (*See* Appendix A.) The MOE measurements provide a mechanism to measure the overall level of Verizon MA's service to the entire CLEC industry in the four areas.

The second method, referred to as the Critical Measures measurements, measures Verizon MA's performance in 12 critical areas, on both a CLEC-specific and a CLEC-aggregate basis. The Critical Measures, which are a subset of the measures included in the MOE segment

are: (1) Response Time OSS Interface; (2) OSS Interface Availability (Prime Time); (3) % On Time Order Notification; (4a) % Missed Appointment - VZ - Total - EEL; (4b) % Missed Appointments Complex; (4c) % Missed Appointments; (5) % Missed Appointments - VZ - No Dispatch - Platform; (6) % On Time Performance Hot Cut (adjusted for misses due to late FOCs); (7) % On-Time Performance - UNE LNP; (8) % Repeat Reports within 30 days; (9) Mean Time to Repair; (10) % Final Trunk Groups Blocking; (11) Collocation; and (12) DSL. A total of \$41.2 million in annual bill credits will be available to CLECs if Verizon MA provides the maximum allowable out of parity performance on all 12 Critical Measures. (*See Appendix B.*) The Critical Measures cover Verizon MA's service in areas critical to the CLECs and provide a mechanism to assure that CLECs on an individual basis are receiving non-discriminatory service.

In addition, the Plan contains a "Special Provisions" segment that focuses on a number of measures that measure key aspects of Verizon MA's performance after it gains entry into the InterLATA long distance market. In order to assure that Verizon MA will provide satisfactory service in these key areas, *e.g.*, flow through and hot cuts, \$18.4 million is made available in addition to the \$82.4 million available under the MOE and Critical Measures for bill credits for these measures. In addition, \$13.4 million will be available for certain UNE ordering measures, to be paid from the MOE dollars at risk, if Verizon MA does not meet service standards and has not reached the cap level for MOE. (*See Section II.E. infra.*)

3. Standards

Each measure will be evaluated according to one of two standards. For the measures where a Verizon MA retail analog exists, a "parity" standard will be applied.¹ For those

¹ The parity measures in the Plan fall into two categories: Measured variables and Counted
(Continued . . .)

measures where no retail analogs are available, an absolute standard has been specified as a surrogate to determine whether Verizon MA is providing non-discriminatory service to the CLECs. The metrics with absolute standards are displayed in Appendix C.

B. Distribution Of The MOE and Critical Measures Credits

1. Distribution of Bill Credits

Annual bill credits totaling \$41.2 million are attributed to the MOE measures and are distributed to each of the MOE categories in amounts that reflect the importance of that MOE to the local exchange competition. Each month one-twelfth (1/12) of the annual amount will be available for bill credits. (*See Appendix A.*) An analogous principle has been applied to the \$41.2 million associated with Critical Measures bill credits. (*See Appendix B.*)

2. Reallocation of Potential Bill Credits

The Department will have the authority to reallocate the monthly distribution of bill credits between and among any provisions of the Plan and the Change Control Assurance Plan. The Department will give the Company 15 days notice prior to the beginning of the month in which the reallocation will occur. Any reallocation will be done pursuant to Department order.

C. MOE Scoring And Bill Credit Calculations

1. Scoring

The measures and standards for the MOE measurements have been placed into four categories: Resale, UNE, Interconnection (Trunks) and Collocation. Since the 1996 Act

(. . . Continued)

variables. Measured variables are metrics of means or averages, such as mean time to repair. Counted variables are metrics of proportions such as percent measures.

requires that Verizon MA provide interconnection “that is at least equal in quality” to that provided to itself, and “nondiscriminatory access” to unbundled elements, each month Verizon MA will apply statistical tests, which are described in Appendix D, to Verizon MA and CLEC performance data to develop z scores, t scores or equivalent permutation scores for the measures.² These statistical scores will be converted into a performance score for each MOE measure as follows:

<u>Statistical Score</u>	<u>Performance Score</u>
$Z \leq -1.645$	-2
$-1.645 < Z \leq -0.8225$	-1
$-0.8225 < Z$	0

For small sample sizes of measures with a parity standard, the Permutation Test will be applied to obtain the statistical scores, which will be converted into a performance score. (See Appendix D.) For small sample sizes of measures with an absolute standard of 95%, a small sample size table will be applied to obtain the performance scores. Measures with absolute standards will be given a performance score of 0, -1, or -2 depending on the performance for that measure. (See Appendix C.)

Thus, for each of the measures within the four MOE categories, Verizon MA’s performance will be graded 0, -1, or -2. Each measure with a performance score of -1 in a given month will be subject to change, depending upon the score for that measure in the next two months. Should Verizon MA maintain a performance score of 0 for the next two months, then the score in the original month will be changed from -1 to 0. The 0 would then be used in

² The statistical methodologies set forth in Appendix D were taken from the New York State
(Continued . . .)

conjunction with all of the other metrics in that MOE category to determine an aggregate score. A score of -2 in a given month will not be subject to change based upon performance in subsequent months. The performance score for each metric will then be weighted, based upon the importance of the metric in determining whether that MOE is open to competition. (See Appendix A, which lists the weights for the MOE measurements.) The weighted scores will then be aggregated (averaged) by each MOE category (Resale, UNE, Interconnection and Collocation), producing an overall weighted score for each of the four categories.

2. Bill Credit Calculations

If Verizon MA's overall (aggregate) performance score in the four categories falls below a minimum score in any given month, wholesale price reductions in the form of bill credits will be implemented and remain in effect for one month.³ If an overall score falls to the maximum score or below, the maximum wholesale price reduction will be implemented. Scores between the minimum and maximum scores will also be entitled to credits pursuant to a credit table for each MOE category. Credit Tables with the range of scores between the minimum and maximum and the applicable rates appear in Appendix A. The bill credits payable to the CLECs will be determined each month by dividing the amount from the table in Appendix A by the actual monthly volumes of the CLEC units in service. The measurement units for each of the MOEs is as follows:

1. UNE – Lines in service at end of month;
2. Resale – Lines in service at end of month;
3. Interconnection (Trunks) – Minutes of use in month; and

(. . . Continued)

Carrier-to-Carrier Guidelines Performance Standards and Reports in Case 97-C-0139.

³ The intent is that the minimum score for each MOE category corresponds to the threshold at which there is a 95% certainty that parity does not exist.

4. Collocation – Cages completed during month.⁴

The maximum scores represent the maximum allowable out of parity condition. The minimum and maximum performance scores and the start point percentages are as follows:

	<u>Minimum</u>	<u>Maximum</u>	<u>Start Point %</u> ⁵
UNE	-.190	-.670	20%
Resale	-.191	-.670	20%
Interconnection	-.301	-1.000	20%
Collocation	.000	-1.200	20%

If an aggregate MOE score is less than one half the difference (*i.e.*, below the midpoint) between the minimum and maximum scores in any one of the four MOE categories for three consecutive months, the amounts in the credit tables in Appendix A for that same three-month period will be doubled for the applicable MOE category. (The midpoints for the MOEs are delineated in Appendix A.) The amounts in Appendix A will remain doubled until such time as Verizon MA achieves a score of one quarter (or greater) the difference between the minimum and maximum scores in that category in any given month. Appendix E provides a detailed step-by-step description of how the MOE performance scores and bill credits will be calculated and distributed to the CLECs.

⁴ For the purpose of the Plan:

1. Lines in service for UNE means UNE-Platform lines, all types of loops and IOF.
2. Lines in service for Resale means Resale lines plus circuits.
3. Trunks – minutes of use per month.
4. Collocation arrangements completed: all arrangements including (a) physical, (b) virtual and (c) other collocation arrangements provided under tariff.

⁵ The “Start Point %” indicates the amount of monthly bill credits that will be due to CLECs if Verizon MA trips the minimum score. For example, if Verizon MA were to score -.191 on the UNE MOE in a month, 20% of the \$2,060,000 monthly amount would be due. (*See* Appendix A.)

3. The Domain Clustering Rule

Domain Clustering will provide CLECs with an additional layer of protection under the MOE mechanism. The term Domain refers to four service quality measures, (*i.e.*, Pre-Order Ordering, Provisioning, and Maintenance and Repair)⁶ that are included in the UNE and Resale MOEs. Under the Domain Clustering Rule, each Domain will be reviewed each month. If 75% or more of the respective Ordering, Provisioning, or Maintenance and Repair Domain weights are tripped, the higher of the clustering overlay or overall market score will be used to determine the market adjustments for the UNE and Resale MOEs. The same rule will apply to the Pre-Ordering Domain, except that the clustering overlay would be effective if all Pre-Ordering response time measures failed at the -2 level, in which case 75% would be used in the overlay calculations. The Domain Clustering methodologies are set forth in detail in Appendix E.

D. Critical Measures Scoring And Bill Credit Calculations

1. Scoring

Verizon MA's performance in 12 measurement categories is critical to the CLECs' ability to compete in the Massachusetts local exchange market. Should Verizon MA performance miss the applicable performance standards for even *one* of these 12 categories, eligible CLECs will be entitled to bill credits. (*See* Appendix B.) The statistical tests and performance scoring mechanism described in the MOE section also apply to these measures.⁷

⁶ The domains do not include billing.

⁷ To the extent that a Critical Measure contains more than one measure, the weights from Appendix A will be used to determine the amount of bill credits available for the individual measure.

2. Bill Credit Calculations

For each Critical Measure, Verizon MA's performance for all CLECs during a given month will be averaged. Should the resulting performance score in any one category fall to -1 or below ("sub-standard performance"),⁸ 50% of the maximum bill credits for that measure will be payable to eligible CLECs. The eligible CLECs are all those CLECs that received Sub-Standard Performance during that month (the "Aggregate Rule"). In addition, should any CLEC receive sub-standard performance for two consecutive months, bill credits for that CLEC will be implemented for the two month period, notwithstanding the fact that all CLECs on average may have received satisfactory performance during the two months (the "Individual Rule").⁹

Bill credits will increase by ten incremental amounts for performance scores between -1 and -2, or Z or t scores between -0.8225 and -1.645. The amounts payable to each CLEC will be in direct proportion to the amount of service that CLEC receives from Verizon MA compared to the other CLECs who received sub-standard performance pursuant to the critical measure. For example, under Critical Measure No. 8, % Repeat Reports within 30 days, the percent of bill credits for an unsatisfactory score would be calculated by determining the number of lines a CLEC had compared to other CLECs that received sub-standard performance. If a score falls to

⁸ The Permutations Test will be used to derive Z and t scores for measures with small sample sizes.

⁹ If all CLECs on average received an aggregate score below -1 for both months, the individual CLEC with the below average score would be entitled to bill credits for the Critical Measure in question under the Aggregate Rule. Likewise, if all CLECs on average received an aggregate score below -1 for the first of the two months and an aggregate score above -1 for the second month, the individual CLEC with sub-standard performance during both months would be entitled to receive bill credits pursuant to the Aggregate Rule for the first month and pursuant to the Individual Rule for the second month. A CLEC is only entitled to receive Bill Credits under the Individual Rule if it receives a score of -1 or less in a Critical Measure category and the CLEC group on average received a score greater than -1 for the Critical Measure.

the maximum level, the maximum bill credits will be implemented for the Critical Measure in question.

Appendix F provides a detailed step-by-step description of how the Critical Measures scores and bill credits will be calculated and distributed to the CLECs.

E. Special Provisions

A number of key measures have been identified that measure aspects of Verizon MA's performance on service quality items that are viewed as essential for CLECs during the first year after Verizon MA's entry in the InterLATA market. Accordingly, additional funds will be made available for these measures under the subparagraphs described below.

1. Flow Through Measures For UNEs

Verizon MA will make an additional \$5.4 million available for potential bill credits, which will be paid on a quarterly basis, for the following flow through UNE metrics measured on a cumulative quarterly basis: OR-5-01 "% Flow Through - Total" and OR-5-03 "% Flow Through Achieved."¹⁰ A performance standard of 80% will apply to OR-5-01, and a performance standard of 95% will apply to OR-5-03. If at the end of any quarter Verizon MA has not achieved one of these two performance standards, it will distribute \$1,350,000 in bill credits. The first point of assessment will be upon Verizon MA's entry into the interLATA market, and any bill credits due under this section will be distributed at that point based upon performance during the three calendar months preceding entry into the interLATA market. The bill credits will be available to all CLECs purchasing UNEs. Any amounts due will be credited

¹⁰ The definition of "% Flow Through Achieved" and the appropriate exclusions for this measure will be determined in the current phase of Case 97-C-0139.

based on the CLEC's lines in service.¹¹ The scoring methodology for this measure is set forth in more detail in Appendix H.

2. UNE Ordering Performance

An additional \$1,083,333 per month, or \$13 million annually, will be made available for bill credits for four non-flow through UNE performance measures:

- OR-1-04 % On Time LSRC < 10 lines (Electronic) – POTS
- OR-1-06 % On Time LSRC ≥ 10 lines (Electronic) – POTS
- OR-2-04 % On Time LSR Reject < 10 lines (Electronic) – POTS
- OR-2-06 % On Time LSR Reject ≥ 10 lines (Electronic) – POTS

Funding for these additional bill credits will come from any unused MOE funds in a month or the six prior months. \$270,833 in bill credits per metric will be distributed under this section to all CLECs ordering UNEs based on the CLEC's lines in service if performance is less than 90% on the respective measures. These credits will be distributed like the bill credits under Critical Measures, Aggregate Rule. (See Appendix H.)

3. Additional Hot Cut Performance Measures

An additional \$13 million for bill credits will be made available for service quality related to two Hot Cut Performance Measures: PR-4-06 "Missed Appointment - % on Time Performance - Hot Cut" and PR-6-02 "Installation Quality - % Installation Troubles Reported Within 7 Days." Bill credits will be paid under this section if either of two events occurs:

- (a) If for any two consecutive months, Verizon MA fails to achieve either 90% on-time performance for Hot Cuts or has greater than a 3.00% rate for installation troubles within 7 days for hot cuts, Verizon MA will distribute \$541,666 in bill credits to the affected CLECs. These credits will be distributed like the bill credits under Critical Measures, Aggregate Rule. If Verizon MA fails to meet either of

¹¹ Lines in service will equal: UNE-P, UNE Loops, IOF, and EEL Loops.

these measures in the first month, but meets them in the second month, no bill credits will be due.

- (b) If for any one month, Verizon MA fails to achieve 85% on-time performance for Hot Cuts or scores greater than a 4.00% rate for installation troubles within 7 days for hot cuts, Verizon MA will distribute \$1,083,333 in bill credits to the affected CLECs for that month. These credits will be distributed like the bill credits under Critical Measures, Aggregate Rule. (See Appendix H.)

F. The Change Control Assurance Plan

A total of \$5.28 million will be placed at risk for the Change Control Process for those CLECs operating in Massachusetts. The credits will be made available using the same methodology used in New York. The Change Control process that is currently in place is common to systems in Massachusetts and New York. A copy of the currently effective CCAP is attached as Appendix I.

G. Monthly Reports

In order to ensure that there is timely information regarding Verizon MA's performance, Verizon MA will report its performance on a monthly basis. Each month, a 7-page report will be made available to all CLECs providing service in Massachusetts.

A sample copy of the report appears in Appendix G. The first three pages will provide information regarding the MOE measures and will include:

1. Verizon MA actual performance to its retail customers where such measures exist and to CLECs for each metric;
2. The number of observations for Verizon MA and the CLECs for each measure (where applicable);
3. The Verizon MA standard deviation (where applicable);
4. The sampling error (where applicable);

5. The appropriate statistical scores (where applicable)¹² or the difference between Verizon MA's and the CLECs' actual performance on the measure (where applicable);
6. A performance score for each measure;
7. The weight for each measure;
8. The weighted performance score; and
9. An aggregation of the performance scores, weighted performance scores, and aggregate bill credits¹³, if any, due under each MOE.

The fourth page will list the Critical Measures and the bill credits, if any, that are due for these measures on an aggregate CLEC basis. The fifth page will include Special Provisions. The sixth page will provide a summary of the total bill credits, if any, due the CLEC industry. The seventh page will provide the amount, if any, due to the individual CLEC for the MOE and Critical Measures.¹⁴ The monthly report will be provided within 25 days of the end of each month.

Verizon MA will continue to provide a separate report on all measures established in the New York C2C proceeding (Case 97-C-0139), allowing for additions, deletions and other modifications ordered by the Department. In addition, to the extent allowed by law, Verizon MA will make available CLEC-specific C2C electronic reports enabling those receiving the reports to evaluate performance at greater levels of detail. The C2C reports will be made available to any CLEC requesting the reports.

¹² A Permutations Test will be applied to small sample sizes to obtain a probability. The probability will be converted to a Z or t score, which in turn will be converted to a performance score.

¹³ Bill credit information will be provided and processed quarterly.

¹⁴ The computer model that will be used to calculate the MOE and Critical Measures bill credits will be posted on Verizon MA's TISOC Website after the Plan becomes effective.

H. Bill Credits Payment

Under the Massachusetts PAP, a CLEC that is currently being provided with performance reports and credits under the Department's *Consolidated Arbitrations* plan will receive the higher of the credits calculated under the two plans on a quarterly basis.

Should Verizon MA's performance not meet the standards set forth above for the MOE and Critical Measure measurements, CLECs will receive bill credits for those MOE categories or Critical Measures scores that fall below the respective minimum levels. To the extent warranted, bill credits in the amount due under the *Consolidated Arbitrations* for the previous quarter will be credited to each CLEC's account within 30 days of the close of the quarter in which the unsatisfactory performance has occurred. Due to the offset provision for non-compliant measures with performance scores of -1 in the Massachusetts PAP, final performance results under the Massachusetts PAP cannot be determined until after the close of the second month after the month under review. If the cumulative monthly credit amounts due under the Massachusetts PAP for a quarter exceed those due under the *Consolidated Arbitrations* for the same quarter, the additional credit amounts will be made within 30 days of the close of the second month after the month under review.

For example, in the first month following the end of a quarter, Verizon MA will report results for the entire quarter just completed under the *Consolidated Arbitrations* plan and for the first month of the quarter under the Massachusetts PAP (*e.g.*, January Massachusetts PAP results become final in April). CLECs will receive whichever credits are greater, those determined by three months reported in the *Consolidated Arbitrations* or those determined by one month of the Massachusetts PAP.

In the second month following the end of a quarter, Verizon MA will report Massachusetts PAP results for the second month of the quarter being reviewed (*e.g.*, February

Massachusetts PAP results become final in May). Verizon MA will then compare the total credits assessed under the Massachusetts PAP for the first two months of the quarter with those paid the prior month. If the credits under two months of the Massachusetts PAP are greater than those previously paid, CLECs will receive additional credits. The amount of the additional credit will be equal to the difference between the two month total Massachusetts PAP credits and the total credits previously processed for the quarter.

In the third month following the end of a quarter, Verizon MA will report Massachusetts PAP results for the third month of the quarter being reviewed (*e.g.*, March Massachusetts PAP results become final in June). Verizon MA will then compare the total credits assessed under the Massachusetts PAP for the three months of the quarter with those previously paid. If the credits under three months of the Massachusetts PAP are greater than those previously paid, CLECs will receive additional credits. The amount of the additional credit will be equal to the difference between the three month total Massachusetts PAP credits and the total credits previously processed for the quarter. This ends the cycle for assessing service and credits for a given quarter.

If the total Massachusetts PAP credits due for the quarter do not exceed those due under *Consolidated Arbitrations*, no additional credits will be issued. If a CLEC does not participate in the *Consolidated Arbitrations*, credit amounts will be made within 30 days of the close of the second month after the month under review.

If the bill credits exceed the balance due Verizon MA on the CLEC's bill, the net balance will be carried as a credit on to the CLEC's next month's bill.

Verizon MA will issue checks in lieu of outstanding bill credits to CLECs that discontinue taking service from Verizon MA.

I. Term Of Performance Assurance Plan

The plan will become effective the day that is the first day of a calendar month Verizon MA enters into the interLATA market and the Department will reevaluate the appropriateness of the Plan when Verizon MA eliminates its Section 272 affiliate. Until such time as a replacement mechanism is developed or the Plan is rescinded, the Plan will remain in effect, as it may be modified from time to time by the Department.

J. Exceptions and Waiver Process

Recognizing that C2C service quality data may be influenced by factors beyond Verizon MA's control, Verizon MA may file Exception or Waiver petitions with the Department seeking to have the monthly service quality results modified on three generic grounds. The first involves the potential for "clustering" of data, and the effect that such clustering has on the statistical models used in this Plan. The requirements of the clustering exception are set forth in Appendix D.

The second ground for filing an exception relates to CLEC behavior. If performance for any measure is impacted by unusual CLEC behavior, Verizon MA will bring such behavior to the attention of the CLEC and attempt to resolve the problem. Examples of CLEC behavior which may influence performance results include:

1. poor order quality, such as missing codes, incorrect codes or misspelled directory listings;
2. actions that cause excessive missed appointments, such as wrong addresses, wrong due dates or offered intervals shorter than the standard interval;
3. actions resulting in excessive multiple dispatch and repeat reports, such as incorrect dispatch information or inadequate testing by a CLEC;

4. inappropriate coding on orders, such as where extended due dates are desired and are not coded as such;
5. delays in rescheduling appointments when Verizon MA has missed an appointment.

If such action negatively influences Verizon MA's performance on any metric, Verizon MA will be permitted to petition for relief. The petition, which will be filed with the Department and served on the CLEC, will provide appropriate, detailed documentation of the events, and will demonstrate that the CLEC behavior has caused Verizon MA to miss the service quality target. Verizon MA's petition must include all data that demonstrates how the measure was missed. It should also include information that excludes the data affected by the CLEC behavior. CLECs and other interested parties will be given an opportunity to respond to any Verizon MA petition for an Exception. If the Department determines that the service results were influenced by inappropriate CLEC behavior, the data will be excluded from the monthly reports.

The third ground for filing a waiver relates to situations beyond Verizon MA's control that negatively affect its ability to satisfy only those measures with absolute standards. The performance requirements dictated by absolute standards establish the quality of service under normal operating conditions, and do not necessarily establish the level of performance to be achieved during periods of emergency, catastrophe, natural disaster, severe storms, work stoppage, or other events beyond Verizon MA's control.

Verizon MA may petition the Department for a waiver of specific performance results for those metrics that have performance targets dictated by absolute standards, if Verizon MA's performance results do not meet the specific standard. This waiver process shall not be available for those metrics for which Verizon MA's wholesale performance is measured by comparison to retail performance (parity metrics).

Any petition pursuant to this provision must demonstrate clearly and convincingly the extraordinary nature of the circumstances involved, the impact that the circumstances had on Verizon MA's service quality, why Verizon MA's normal, reasonable preparations for difficult situations proved inadequate, and the specific days affected by the event. The petition must also include an analysis of the extent to which the parity metrics (retail and wholesale) were affected by the subject event, and must be filed within 45 days from the end of month in which the event occurred.

The Department will determine which, if any, of the daily and monthly results should be adjusted in light of the extraordinary event cited, and will have full discretion to consider all available evidence submitted. Insufficient filings may be dismissed for failure to make a *prima facie* showing that relief is justified.

K. Annual Review, Updates And Audits

1. Annual Review And Updates

Each year the Department and Verizon MA will review the Performance Assurance Plan to determine whether any modifications or additions should be made. During this review, the Department and Verizon MA can determine, among other things, whether: (1) measures and weights should be modified, added or deleted; (2) modifications should be made to the distribution of dollars at risk among the four MOE and Critical Measures categories; (3) geographic deaveraging should be adopted for reporting metric results; (4) the clustering and CLEC behavior exceptions included in Appendix D should be modified; (5) small sample size procedures should be modified; and (6) the methodologies used to calculate the bill credits should be modified.¹⁵ All aspects of the Plan, however, will be subject to review. The annual review process may be initiated no more than six months before the anniversary date of Verizon MA's entry into the long distance market pursuant to Section 271. Any modifications to the Plan will be implemented as soon as is reasonably practical after Department approval of the modifications.

¹⁵

In particular, during the first annual review, the methodology used to calculate amounts due to CLECs under the Individual Rule for bill credits under the Critical Measures category will be analyzed to determine whether the rule provides for an appropriate distribution of bill credits.

2. Changes to the New York Plan

Changes to the New York Plan adopted by the New York PSC will be filed with the Department within 30 days for inclusion in the Massachusetts Plan upon the Department's approval.

3. Annual Audit

Each year the Department will audit Verizon's data and reporting, with the first audit beginning 6 months after Verizon MA enters the Long Distance market in Massachusetts. The audits shall be performed by an independent auditor, selected by the Department through a competitive bidding process and paid for by Verizon. The first audit will include an examination of data reliability issues. Subsequent audits will include an examination of data reliability issues at the Department's discretion.

VERIZON MASSACHUSETTS

APPENDIX A

October 27, 2000

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1. Measures and Weights
2. Assignment of Dollars at Risk to MOE Categories on Monthly and Annual Basis
3. Minimum and Maximum Bill Credit Table

APPENDIX A – MODE OF ENTRY

1. Measures and Weights

Table A-1-1: Resale

Table A-1-2: Unbundled Network Elements

Table A-1-3: Interconnection Trunks

Table A-1-4: Collocation

Note: **BOLD** indicates Critical Measure

Table A-1-1: Resale - Mode of Entry Weights

PO	Pre-Ordering	Weight
1-01	Customer Service Record	15
1-02	Due Date Availability	5
1-03	Address Validation	5
1-04	Product and Service Availability	5
1-05	Telephone Number Availability and Reservation	5
1-06	Facility Availability (Loop Qualification)	5
2-02	OSS System Availability – Prime	20
3-02	% Answered within 30 Seconds – Ordering	10
3-04	% Answered within 30 Seconds – Repair	10
OR	Ordering	
1-02	% On Time LSRC - Flow Through - POTS	40
1-04	% OT LSRC <10 Lines (Elec.- No Flow Through) – POTS	10
1-04	% OT LSRC <10 Lines (Elec.- No Flow Through) – Specials	5
1-06	% On Time LSRC >= 10 Lines (Electronic) – POTS	10
1-06	% On Time LSRC >= 10 Lines (Electronic) – Specials	5
2-02	% On Time LSR Reject - Flow Through – POTS	30
2-04	% OT LSR Reject<10 Lines (Elec.-No Flow Through)-POTS	30
2-04	% OT LSR Reject<10 Lines (Elec.-No Flow Through)-Specials	5
2-06	% On Time LSR Reject >=10 Lines (Electronic) – POTS	10
2-06	% On Time LSR Reject >=10 Lines (Electronic) – Specials	5
4-09	% SOP to Bill Completion Notice Sent Within 3 Business Days	30
5-03	% Flow Through Achieved	20
6-03	% Accuracy – LSRC	10
PR	Provisioning	
3-08	% Completed w/in 5 Days (1-5 lines - No Dispatch) – POTS	10
3-09	% Completed w/n 5 Days (1-5 lines - Dispatch) – POTS	5
4-01	% Missed Appointment - BA - Total – Specials	10
4-02	Average Delay Days - Total – POTS	10
4-02	Average Delay Days - Total – Specials	10
4-04	% Missed Appointment - BA - Dispatch – POTS	10
4-05	% Missed Appointment- BA - No Dispatch - POTS	20
5-01	% Missed Appointment - Facilities – POTS	10
5-01	% Missed Appointment - Facilities – Specials	10
5-02	% Orders Held for Facilities > 15 days – POTS	5
5-02	% Orders Held for Facilities > 15 days – Specials	5
6-01	% Installation Troubles within 30 days – POTS	15
6-01	% Installation Troubles within 30 days – Specials	15
MR	Maintenance & Repair	
1-01	Average Response Time - Create Trouble	5
1-03	Average Response Time - Modify Trouble	5
1-04	Average Response Time - Request Cancellation of Trouble	5
1-06	Average Response Time - Test Trouble (POTS only)	5
2-01	Network Trouble Report Rate – Specials	10
2-02	Network Trouble Report Rate - Loop (POTS)	10
3-01	% Missed Repair Appointments – Loop	20
3-02	% Missed Repair Appointments - Central Office	5
4-01	Mean Time to Repair – Specials	20
4-02	Mean Time to Repair - Loop Trouble	15
4-03	Mean Time to Repair - CO Trouble	5
4-08	% Out of Service > 24 Hours – POTS	20
4-08	% Out of Service > 24 Hours – Specials	10
5-01	% Repeat Reports w/in 30 days - POTS	15
5-01	% Repeat Reports w/in 30 days - Specials	15
BI	Billing	
1-01	% DUF in 4 Business Days	10
		600

Table A-1-2: Unbundled Network Elements - Mode of Entry Weights

PO	Pre-Ordering	Weight
1-01	Customer Service Record	15
1-02	Due Date Availability	5
1-03	Address Validation	5
1-04	Product and Service Availability	5
1-05	Telephone Number Availability and Reservation	5
1-06	Facility Availability (Loop Qualification)	5
2-02	OSS Interface Availability – Prime	20
3-02	% Answered within 30 Seconds – Ordering	10
3-04	% Answered within 30 Seconds – Repair	10
OR	Ordering	
1-02	% On Time LSRC - Flow Through - POTS	40
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through)-POTS	10
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through)-Specials	5
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through)-Complex	0
1-06	% On Time LSRC >=10 Lines (Electronic) – POTS	10
1-06	% On Time LSRC >=10 Lines (Electronic) – Specials	5
1-06	% On Time LSRC >=10 Lines (Electronic) – Complex	0
2-02	% On Time LSR Reject - Flow Through – POTS	30
2-04	% OT LSR Reject<10 lines (Elec.-No Flow Through)-POTS	30
2-04	% OT LSR Reject<10 lines (Elec.-No Flow Through)-Specials	5
2-04	% OT LSR Reject<10 lines (Elec.-No Flow Through)-Complex	0
2-06	% On Time LSR Reject >= 10 Lines (Electronic) – POTS	10
2-06	% On Time LSR Reject >= 10 Lines (Electronic) – Specials	5
2-06	% On Time LSR Reject >= 10 Lines (Electronic) – Complex	0
4-09	% SOP to Bill Completion Sent Within 3 Business Days	30
5-03	% Flow Through – Achieved	20
6-03	% OT Accuracy LSRC	10
PR	Provisioning	
3-08	% Completed w/in 5 Days (1-5 lines-No Dispatch)-UNE-P/Other	5
3-09	% Completed w/in 5 Days (1-5 lines-Dispatch)-UNE-P/Other	10
4-01	% Missed Appointment - BA – Total – Specials	10
4-01	% Missed Appointment - BA – Total – EEL	10
4-01	% Missed Appointment - BA - Total – IOF	10
4-02	Average Delay Days - Total – POTS	10
4-02	Average Delay Days - Total – Specials	10
4-02	Average Delay Days - Total – Complex	10
4-04	% Missed Appointment - BA – Dispatch – Platform	10
4-04	% Missed Appointment - BA – Dispatch - New Loop	10
4-04	% Missed Appointment - BA – Dispatch – Complex	10
4-05	% Missed Appointment- BA - No Dispatch - Platform	20
4-05	% Missed Appointment- BA - No Dispatch - Complex	10
4-06	% On Time Performance - Hot Cut	20
5-01	% Missed Appointment - Facilities – POTS	10
5-01	% Missed Appointment - Facilities – Specials	10
5-02	% Orders Held for Facilities > 15 days – POTS	5
5-02	% Orders Held for Facilities > 15 days – Specials	5
6-01	% Installation Troubles within 30 days - POTS Other	15
6-01	% Installation Troubles within 30 days – Specials	15
6-02	% Installation Troubles within 7 days – Hot Cut Loops	15

<u>MR</u>	Maintenance & Repair	
1-01	Average Response Time - Create Trouble	5
1-03	Average Response Time - Modify Trouble	5
1-04	Average Response Time - Request Cancellation of Trouble	5
1-06	Average Response Time - Test Trouble (POTS only)	5
2-01	Network Trouble Report Rate – Specials	10
2-02	Network Trouble Report Rate - Loop (POTS)	10
3-01	% Missed Repair Appointments – Loop	20
3-02	% Missed Repair Appointments - Central Office	5
4-01	Mean Time to Repair – Specials	20
4-02	Mean Time to Repair - Loop Trouble	15
4-03	Mean Time to Repair - CO Trouble	5
4-08	% Out of Service > 24 Hours – POTS	20
4-08	% Out of Service > 24 Hours – Specials	10
5-01	% Repeat Reports w/in 30 days - POTS	15
5-01	% Repeat Reports w/in 30 days - Specials	15
<u>BI</u>	Billing	
1-01	% DUF in 4 Business Days	10
		695

Table A-1-3: Interconnection - Mode of Entry Weights

OR-	Ordering	Weight
1-12	% On Time Firm Order Confirmations	15
1-13	% On Time Design Layout Record	10
2-12	% On Time Trunk ASR Reject	10
PR-	Provisioning	
4-01	% Missed Appointment - BA – Total	20
4-02	Average Delay Days – Total	10
4-07	% On Time Performance - LPN only	20
5-01	% Missed Appointment – Facilities	10
5-02	% Orders Held for Facilities > 15 Days	10
6-01	% Installation Troubles w/in 30 Days	15
MR-	Maintenance & Repair	
4-01	Mean Time to Repair – Total	20
5-01	% Repeat Reports w/in 30 Days	10
NP-	Network Performance	
1-03	# of Final Trunk Groups Blocked 2 Months	10
1-04	# of Final Trunk Groups Blocked 3 Months	20
		180

Table A-1-4: Collocation - Mode of Entry Weights

NP-	Network Performance	Weight
2-01	% OT Response to Request for Physical Collocation	10
2-02	% OT Response to Request for Virtual Collocation	10
2-05	% On Time – Physical Location	20
2-06	% On Time – Virtual Location	20
2-07	Average Delay Days – Physical	20
2-08	Average Delay Days – Virtual	20
		100

2. Mode of Entry: Dollars At Risk – \$41,200,000

	Resale	UNE	Collocation	Trunks
Monthly	\$515,000	\$2,060,000	\$118,391	\$739,943
Annual	\$6,180,000	\$24,720,000	\$1,420,690	\$8,879,310

3. Minimum and Maximum Bill Credit Tables:

Table A-3-1: Resale

Table A-3-2: Unbundled Network Elements

Table A-3-3: Interconnection Trunks

Table A-3-4: Collocation

Table A-3-1: Resale

- Maximum of \$ 6,180,000 per year
- Maximum Credit Performance Score “X” = -0.670
- Minimum threshold = -0.1908
- Mid-point between minimum and maximum = -0.4304

Score Range		Monthly Dollars:	
<	And ³		
	-0.1908	\$0	
-0.1908	-0.2160	\$103,000	
-0.2160	-0.2412	\$124,684	
-0.2412	-0.2664	\$146,368	
-0.2664	-0.2917	\$168,053	
-0.2917	-0.1369	\$189,737	
-0.1369	-0.3421	\$211,421	
-0.3421	-0.3673	\$233,105	
-0.3673	-0.3926	\$254,789	
-0.3926	-0.4178	\$276,474	
-0.4178	-0.4430	\$298,158	
-0.4430	-0.4682	\$319,842	
-0.4682	-0.4934	\$341,526	
-0.4934	-0.5187	\$363,211	
-0.5187	-0.5439	\$384,895	
-0.5439	-0.5991	\$406,579	
-0.5991	-0.5973	\$428,263	
-0.5973	-0.6196	\$449,947	
-0.6196	-0.6448	\$471,632	
-0.6448	-0.6700	\$493,316	
-0.6700		\$515,000	

Table A-3-2: Unbundled Network Elements

- Maximum of \$ 24,720,000 per year
- Maximum Credit Performance Score “X” = -0.670
- Minimum threshold = -0.1904
- Mid-point between minimum and maximum = -0.4302

Score Range		Monthly Dollars:	
<	And ³		
	-0.1904	\$0	
-0.1904	-0.2157	\$412,000	
-0.2157	-0.2409	\$498,737	
-0.2409	-0.2662	\$585,474	
-0.2662	-0.2914	\$672,211	
-0.2914	-0.3166	\$758,947	
-0.3166	-0.3419	\$845,684	
-0.3419	-0.3671	\$932,421	
-0.3671	-0.3924	\$1,019,158	
-0.3924	-0.4176	\$1,105,895	
-0.4176	-0.4428	\$1,192,632	
-0.4428	-0.4681	\$1,279,368	
-0.4681	-0.4933	\$1,366,105	
-0.4933	-0.5186	\$1,452,842	
-0.5186	-0.5438	\$1,539,579	
-0.5438	-0.5690	\$1,626,316	
-0.5690	-0.5943	\$1,713,053	
-0.5943	-0.6195	\$1,799,789	
-0.6195	-0.6448	\$1,886,526	
-0.6448	-0.6700	\$1,973,263	
-0.6700		\$2,060,000	

Table A-3-3: Interconnection Trunks

- Maximum of \$ 8,879,310 per year
- Maximum Credit Performance Score “X” = -1.000
- Minimum threshold = -0.3014
- Mid-point between minimum and maximum = -0.6507

Score Range		Monthly Dollars:	
<	And ³		
	-0.3014	\$0	
-0.3014	-0.3551	\$147,989	
-0.3551	-0.4088	\$193,523	
-0.4088	-0.4626	\$239,058	
-0.4626	-0.5163	\$284,593	
-0.5163	-0.5701	\$330,128	
-0.5701	-0.6238	\$375,663	
-0.6238	-0.6776	\$421,198	
-0.6776	-0.7313	\$466,733	
-0.7313	-0.7850	\$512,268	
-0.7850	-0.8388	\$557,803	
-0.8388	-0.8925	\$603,338	
-0.8925	-0.9463	\$648,873	
-0.9463	-1.0000	\$694,408	
-1.0000		\$739,943	

Table A-3-4: Collocation

- Maximum of \$ 1,420,690 per year
- Maximum Credit Performance Score “X” = -1.200
- Minimum threshold = 0
- Mid-point between minimum and maximum = -0.6

Score Range		Monthly Dollars:	
<	And ³		
	0	\$0	
0.00000	-0.10	\$23,678	
-0.10	-0.20	\$31,571	
-0.20	-0.30	\$39,464	
-0.30	-0.40	\$47,356	
-0.40	-0.50	\$55,249	
-0.50	-0.60	\$63,142	
-0.60	-0.70	\$71,034	
-0.70	-0.80	\$78,927	
-0.80	-0.90	\$86,820	
-0.90	-1.00	\$94,713	
-1.00	-1.10	\$102,605	
-1.10	-1.20	\$110,498	
-1.20		\$118,391	

APPENDIX B

Appendix B CRITICAL MEASURES			Monthly \$ At Risk				
		Description	Resale	UNE	Collocation	Trunks	TOTAL
1		Response Time OSS Interface	\$82,873	\$195,345			\$278,218
	PO-1-01	Customer Service Record	\$31,078	\$73,254			
	PO-1-02	Due Date Availability	\$10,360	\$24,418			
	PO-1-03	Address Validation	\$10,360	\$24,418			
	PO-1-04	Product & Service Availability	\$10,360	\$24,418			
	PO-1-05	TN Reservation	\$10,360	\$24,418			
	PO-1-06	Facility Availability (Loop	\$10,360	\$24,418			
2	PO-2-02	OSS Interface Availability (Prime Time)	\$82,873	\$195,345			\$278,218
3		Ordering Performance		\$195,345			\$195,345
	OR-1-02	% On Time LSRC - Flow Through (POTS)		\$48,836			
	OR-1-04	% On Time LSRC <10 lines (No Flow-Through) (POTS)		\$12,307			
	OR-1-06	% On Time LSRC >=10 lines (No Flow-Through) (POTS)		\$12,307			
	OR-2-02	% On Time Reject - Flow Through (POTS)		\$36,725			
	OR-2-04	% On Time Reject <10 lines (No Flow-Through) (POTS)		\$36,725			
	OR-2-06	% On Time Reject >=10 lines (No Flow-Through) (POTS)		\$12,307			
	OR-4-09	% SOP to Bill Completion Sent Within 3 Business Days		\$36,725			
4a	PR-4-01	% Missed Appointment - BA - Total - EEL		\$97,672			\$97,672
4b		% Missed Appointments	\$82,873	\$97,672		\$236,782	\$417,327
	PR-4-01	Total - Specials	\$20,718	\$48,836			
	PR-4-01	Total - Trunks					
	PR-4-04	Dispatch - POTS	\$20,718				
	PR-4-04	Dispatch - Loop - New		\$48,836			
	PR-4-05	No Dispatch - POTS	\$41,437				
5	PR-4-05	% Missed Appointment - BA - No Dispatch - Platform		\$195,345			\$195,345
6		Hot Cut Loop Performance ¹		\$390,690			\$390,690
	PR-4-06	% On Time - Hot Cut Loop					
	PR-6-01	% Installation Troubles within 7					
7	PR-4-07	% On Time Performance - UNE LNP				\$236,782	\$236,782
8		% Repeat Reports within 30 Days	\$82,873	\$195,345			\$278,218
	MR-5-01	POTS	\$41,437	\$97,672			
	MR-5-01	Specials	\$41,437	\$97,672			
9		Mean Time To Repair	\$82,873	\$195,345		\$236,782	\$515,000
	MR-4-01	Total (Specials/Trunks)	\$27,624	\$65,115		\$236,782	
	MR-4-02	Dispatch	\$20,718	\$48,837			
	MR-4-03	No Dispatch	\$6,906	\$16,278			
	MR-4-08	% Out of Service > 24 Hours	\$27,624	\$65,115			
10		% Final Trunks Groups Blocking				\$236,782	\$236,782
	NP-1-03	Blocked 2 Months				\$78,926	
	NP-1-04	Blocked 3 Months				\$157,854	
11		Collocation			\$118,392		\$118,392
	NP-2-5\6	% Completed on Time - Physical			\$59,196		
	NP-2-7\8	Average Delay Days - Physical			\$59,196		
12		xDSL Performance		\$195,345			\$195,345
	PO-8-01	Avg. Response Time - Manual		\$24,418			
	PO-8-02	Avg. Response Time -		\$24,418			
	PR-4-14-18	% Completed on Time		\$122,091			
	PR-6-01	% Installation Troubles - xDSL		\$24,418			
		Total Dollars At Risk - Monthly	\$414,368	\$1,953,448	\$118,391	\$947,126	\$3,433,333
		Total Dollars At Risk - Annual	\$4,972,414	\$23,441,379	\$1,420,690	\$11,365,517	\$41,200,000

(1) OSS \$ allocated to Resale and UNE Lines in Service

¹ If either sub-metric performance standard is missed, the critical measure is considered missed.

APPENDIX C

Performance Scores for Measures with Absolute Standards:

Metric #'s	Measure	0	-1	-2
PO-1 and MR-1 ¹	OSS Response Time Measures	≤ 4 second difference	> 4 and ≤ 6 second difference	> 6 second difference
PO-2-02	OSS System Availability – Prime	≥ 99.5%	≥ 98 and < 99.5%	< 98%
See Table ²	Metrics with 95% standards	≥ 95%	≥ 90 and < 95%	< 90%
PO-3	% Answered within 30 Seconds – Ordering & Repair	≥ 80%	≥ 75 and < 80%	< 75%
NP-2-08 NP-2-09	Collocation – Average Delay Days	≤ 6 Days	> 6 and ≤ 15 Days	> 15 Days
NP-1-03 NP-1-04	# of Final Trunk Groups Blocked for 2 and 3 Months	Final Interconnection Trunks meeting or exceeding blocking standard for one month	Any individual Final Interconnection Trunk group exceeding blocking standard for 2 months in a row	Any individual Final Interconnection Trunk group exceeding blocking standard for 3 months in a row
PR-6-02	% Installation Troubles reported within 7 Days – Hot Cut loop	≤ 2%	> 2 and ≤ 3%	> 3%

Example: If Verizon-MA were to perform at 97.0% for PO-2-02- OSS System Availability – Prime, in a month, then the performance score would be –2 for that measure.

¹ Includes PO-1-01, PO-1-02, PO-1-03, PO-1-04, PO-1-05, PO-1-06, MR-1-01, MR-1-03, MR-1-04 and MR-1-06

² The Metrics with a 95% Standard appear on the following page.

Table C-1-1: Performance Metrics with 95% Performance Standard:

<u>OR</u>	Ordering
1-02	% On Time LSRC - Flow Through - POTS – 2hrs
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through) - POTS
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through) - Specials
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through) - Complex
1-06	% On Time LSRC >=10 Lines (Electronic) – POTS
1-06	% On Time LSRC >=10 Lines (Electronic) – Specials
1-06	% On Time LSRC >=10 Lines (Electronic) – Complex
1-12	% On Time Firm Order Confirmations
1-13	% On Time Design Layout Record
2-02	% On Time LSR Reject - Flow Through – POTS
2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through) - POTS
2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through) - Specials
2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through) - Complex
2-06	% On Time LSR Reject >= 10 Lines (Electronic) - POTS
2-06	% On Time LSR Reject >= 10 Lines (Electronic) - Specials
2-06	% On Time LSR Reject >= 10 Lines (Electronic) - Complex
2-12	% On Time Trunk ASR Reject
4-09	% SOP to Bill Completion Notice Sent Within 3 Business Days
5-03	% Flow Through Achieved
6-03	% OT Accuracy LSRC
<u>PR</u>	Provisioning
4-06	% On Time Performance - Hot Cut
4-07	% On Time Performance - LNP only
<u>BI</u>	Billing
1-01	% DUF in 4 Business Days
<u>NP</u>	Network Performance
2-01	% OT Response to Request for Physical Collocation
2-02	% OT Response to Request for Virtual Collocation
2-05	% On Time - Physical Location
2-06	% On Time - Virtual Location

**Table C-1-2: Allowable Misses for Small Sample Sizes for
Counted Variable Performance Measures with Absolute Standards**

A. Allowable Misses:

- If less than 20 items, find volume of items measured in Sample Size Column.
- If the number of misses falls under the Zero weight column, then the performance measure is given a weight of zero and not counted towards the total performance score.
- If the number of misses falls in the “0” column, a performance score of 0 is given the performance metric.
- If the number of misses falls into the “-1” column, the performance score for the metric I –1.
- If the number of misses falls into the –2 column, the performance score is –2.
- “NA” is not applicable

95% Standard:

Sample Size	Zero Weight	0	-1	-2
1	1	0	NA	NA
2	1	0	2	NA
3	1	0	2	3
4	1	0	2	3+
5	1	0	2	3+
6	1	0	2	3+
7	1	0	2	3+
8	1	0	2	3+
9	1	0	2	3+
10	1	0	2	3+
11	1	0	2	3+
12	1	0	2	3+
13	1	0	2	3+
14	1	0	2	3+
15	1	0	2	3+
16	1	0	2	3+
17	1	0	2	3+
18	1	0	2	3+
19	1	0	2	3+
20	NA	≤ 1	2	3+

B. CLEC Exception Process

Each month each CLEC will have the right to challenge the allowable misses or exclusions that Verizon-MA may exercise pursuant to the small sample size table for

performance measures with absolute standards. If a CLEC exercises this right, it must file a petition with the Department demonstrating that the exclusion will have a significant impact on the operations of the CLEC's business and that Verizon-MA should not be allowed to exclude the event pursuant to the above table. Verizon-MA will have a right to respond to any such challenge by the CLEC. The Timeline for CLEC Exceptions will be the same as the Timeline for Verizon-MA Exceptions under the small sample size section in Appendix D. If a CLEC's Exception Petition is granted, the appropriate bill credits will be reflected on the CLEC's bill as soon as is practical.

APPENDIX D

STATISTICAL ANALYSIS

A. Statistical Methodologies:

The Performance Assurance Plan uses statistical methodologies as one means to determine if “parity” exists, or if the wholesale service performance for CLECs is equivalent to the performance for Verizon-MA. For performance measures where “parity” is the standard and sufficient sample size exists, Verizon-MA will use the “modified Z statistic” proposed by a number of CLECs who are members of the Local Competitors User Group (“LCUG”). A Z or t score of below -1.645 provides a 95% confidence level that the variables are different, or that they come from different processes. The specific formulas are as follows:

Measured Variables:	Counted Variables:	¹
$t = \frac{\bar{X}_{CLEC} - \bar{X}_V}{\sqrt{s_V^2 \left(\frac{1}{n_{CLEC}} + \frac{1}{n_V} \right)}}$	$Z = \frac{P_{CLEC} - P_V}{\sqrt{P_V (1 - P_V) \left(\frac{1}{n_{CLEC}} + \frac{1}{n_V} \right)}}$	

Definitions:

Measured Variables are metrics of means or averages, such as mean time to repair, or average interval.

Counted Variables are metrics of proportions, such as percent measures.

\bar{X} is defined as the average performance or mean of the sample.

S is defined as the standard deviation.

n is defined as the sample size.

p is defined as the proportion, for percentages 90% translates to a 0.90 proportion.

¹

For metrics where higher numbers indicate better performance, this equation is reversed. These include: % Completed w/in 5 days – (1-5 lines – No Dispatch and % Completed w/in 5 days (1-5 lines – Dispatch)

B. Sample Size Requirements:

The standard Z or t statistic will be used for measures where “parity” is the standard, unless there is insufficient sample size. For measured variables, the minimum sample size is 30. For counted variables, the result of $np(1-p)$ must be greater than or equal to 5. When the sample size requirement is not met, Verizon-MA will do the following:

1. If the performance for the CLEC is better than Verizon-MA’s performance, no statistical analysis is required.
2. If the performance is worse for the CLEC than Verizon-MA, Verizon-MA will use the Permutation Test.
3. If the permutation test shows an “out of parity” condition, Verizon-MA will perform a root cause analysis to determine cause. If the cause is the result of “clustering” within the data, Verizon-MA will provide documentation demonstrating that clustering caused the out of parity condition.
4. The nature of the variables used in the performance measures is such that they do not meet the requirements 100% of the time for any statistical testing including the requirement that individual data points must be independent. The primary example of such non-independence is a cable failure. If a particular CLEC has fewer than 30 troubles and all are within the same cable failure with long duration, the performance will appear out of parity due to this clustering. However, for all troubles, including Verizon-MA troubles, within that individual event, the trouble duration is identical. Another example of clustering is if a CLEC has a small number of orders in a single location, with a facility problem. If this facility problem exists for all customers served by that cable and is longer than the average facility problem, the orders are not independent and clustering

occurs. Finally, if root cause shows that the difference in performance is the result of CLEC behavior, Verizon-MA will identify such behavior and work with the respective CLEC on corrective action.

C. Verizon Exceptions Process:

1. A key frailty of using statistics to evaluate parity is that a key assumption about the data, necessary to use statistics, is faulty. As noted, one such assumption is that the data is independent. Events included in the performance measures of provisioning and maintenance of telecommunication services are not independent. The lack of independence is referred to as “clustering” of data. Clustering occurs when individual items (orders, troubles, *etc.*) are clustered together as one single event. This being the case, Verizon-MA will have the right to file an exception to the performance scores in the Performance Assurance Plan if the following events occur:

- a. **Event Driven Clustering: Cable Failure:** If a significant proportion (more than 30%) of a CLEC’s troubles are in a single cable failure, Verizon-MA may provide data demonstrating that all troubles within that failure, including Verizon-MA troubles were resolved in an equivalent manner. Verizon-MA also will provide the repair performance data with that cable failure performance excluded from the overall performance for both the CLEC and Verizon-MA. The remaining troubles will be compared according to normal statistical methodologies.
- b. **Location Driven Clustering: Facility Problems:** If a significant proportion (more than 30%) of a CLEC’s missed installation orders and resulting delay days were due to an individual location with a significant

facility problem, Verizon-MA will provide the data demonstrating that the orders were “clustered” in a single facility shortfall. Then, Verizon-MA will provide the provisioning performance with that data excluded. Additional location driven clustering may be demonstrated by disaggregating performance into smaller geographic areas.

- c. **Time Driven Clustering: Single Day Events:** If significant proportion (more than 30%) of CLEC activity, provisioning or maintenance, occur on a single day within a month, and that day represents an unusual amount of activity in a single day, Verizon-MA will provide the data demonstrating that the activity is on that day. Verizon-MA will compare that single day’s performance for the CLEC to Verizon-MA’s own performance. Then, Verizon will provide data with that day excluded from overall performance to demonstrate “parity.”

2. Documentation:

Verizon-MA will provide all details, ensuring protection of customer proprietary information, to the CLEC and Department. Details include, individual trouble reports, and orders with analysis of Verizon-MA and CLEC performance. For cable failures, Verizon-MA will provide appropriate documentation detailing all other troubles associated with that cable failure.

3. Timeline for Exceptions Process:

The following is an example illustrating the timeline for the Exception Process.

Action	Date
January Performance Reports	February 25 th
Verizon Files Exceptions on January Performance	March 15 th
CLEC and other interested parties Files Reply to Verizon Exceptions	April 1 st
Department Issues Ruling on Exceptions	April 15 th
February Performance Reports	March 25 th
March Performance Reports	April 25 th
Credits Processed for January Performance	By May 1 st

APPENDIX E

Mode of Entry Bill Credit Mechanism

The following are the steps that will be undertaken to determine whether Bill Credits are due to any CLECs for the MOE categories.

1. For each MOE measure with a “parity” standard: Calculate Z or t score or perform permutation test (for small samples).¹

2. Convert Z, t or permutation equivalent score to performance score pursuant to the following table:

<u>Statistical Score</u>	<u>Performance Score</u>
£ -1.645	-2
< -0.8225 and > -1.645	-1
> -0.8225	0 ²

3. For each MOE measure with an absolute standard: Determine Performance Score using performance range for the applicable measure. For small sample sizes, the small sample size table for measures with absolute standards is used. (See Appendix C.)

4. If the Aggregate Total Performance Score for a MOE is greater than the minimum value allowable for the applicable MOE (See Minimum and Maximum Bill Credit Tables in Appendix A), no bill credits are due to the CLECs that received the particular MOE services in that month. If the value is equal to or less than a minimum value, CLECs will be paid Bill

¹ When “no activity occurs” in a metric the performance measure and its weight will be excluded from performance score.

² For report rate measures – regardless of z or t score – if absolute difference is less than 0.1%, the performance score is a 0.

Credits pursuant to the Bill Credit Tables in Appendix A, which will be adjusted to reflect the monthly volumes or units being used by the CLECs.³

5. The MOE Bill Credit Table reflects (1) the range of the aggregate performance scores from the minimum to maximum, (2) the monthly dollars attributable to each score, (3) the aggregate CLEC monthly volumes for the measure, and (4) the corresponding monthly rate what will be paid to each CLEC if Verizon-MA's performance is at that particular level. The individual CLEC's Bill Credit will be determined by multiplying the CLEC's monthly units in service by the applicable rate for the Aggregate MOE score.

6. For example, assume the first two steps of the UNE Bill Credit Table were as follow:

Score	Mon. \$	Mon. Vol.	Mon. Rate
-0.260	\$585,474	100,000	\$5.85
-0.300	\$758,947	100,000	\$7.58

Using the above Credit Table, if the Aggregate MOE score was -0.300 and a CLEC had 5,000 UNE lines (at the end of the month), it would entitled to a \$26,700 Bill Credit ($\$7.58 \times 5,000 = \$37,900$).

8. The Domain Clustering Rule

The Mode of Entry measures are classified into four key domains: Pre-Order, Ordering, Provisioning and Maintenance. To ensure that competition is not negatively influenced by poor performance on measures in any one of these domains, a Domain Clustering Rule has been established under this Plan. The rule, which applies only to the UNE and Resale MOEs, enables the entire mode of entry performance score to be modified if 75% or more of the total weights

³ The measurement units for UNEs and Resale are lines in service. For Interconnection, it is minutes in use. For Collocation, it is collocation cages installed in the month.

for the measures in any of the domains is tripped. For the Pre-Order domain, this percentage is reduced to 66.7%. Under this rule, the lower of the overall MOE score or the Domain score will be used to determine whether any bill credits are due. The domain score will be calculated as follows: First, determine the % of weights tripped, *e.g.*, if a domain contained a number of metrics with a total weight of 80, and 65 of the 80 weights were tripped, the domain percentage would be 81.2%. Since this is greater than 75%, the domain clustering rule will apply,. Next, determine the difference between the minimum and maximum performance scores for the MOE, in which the domain appeared. For example, the minimum score for the UNE MOE is -0.1904 and the maximum score for the UNE MOE is -0.67, therefore, the difference is -0.4796. This figure would be multiplied by the 81.2%. This equals -0.3894. This number (-0.3894) would be added to the minimum score and would result in a domain clustering score of -0.5798. If the MOE score were -0.388, the performance score for the MOE would be replaced with the domain clustering score of -0.5798 based on the Domain Clustering Rule.

APPENDIX F

Critical Measures Performance Scoring

- A. The following steps would be taken to determine which CLECs would be entitled to Bill Credits pursuant to the Aggregate Rule, *i.e.*, when aggregate CLEC performance falls below standard for a critical measure.

1. Calculate the total dollars available for Bill Credits per critical measure per month.

An increment table will be developed for each critical measure to determine the Bill Credits available for unsatisfactory performance, *i.e.*, at or less than performance scores of -1. The tables will range from 50% of the maximum monthly amount, for a performance difference of less than 1% to 100% of the amount for performance differences of 10% and greater.¹ A sample table appears below for z and t and performance scores where the maximum monthly amount for the measure is \$390,690.

Table F-1-1
Allocation of Dollars for Critical Measures
Measures with Statistical Evaluation Standards

<u>Statistical Score</u>		<u>Performance</u>	<u>Increment</u>	<u>Dollars</u>
<u>From</u>	<u>To</u>	<u>Score</u>		
	> -0.8225	0	0%	\$0
≤ -0.8225	> -0.9048	-1.0	50%	\$195,345
≤ -0.9048	> -0.9870	-1.1	55%	\$214,880
≤ -0.9870	> -1.0693	-1.2	60%	\$234,414
≤ -1.0693	> -1.1515	-1.3	65%	\$253,949
≤ -1.1515	> -1.2338	-1.4	70%	\$273,483
≤ -1.2338	> -1.3160	-1.5	75%	\$293,018
≤ -1.3160	> -1.3983	-1.6	80%	\$312,552
≤ -1.3983	> -1.4805	-1.7	85%	\$332,087
≤ -1.4805	> -1.5628	-1.8	90%	\$351,621
≤ -1.5628	> -1.6450	-1.9	95%	\$371,156
≤ -1.645		-2.0	100%	\$390,690

¹ For HOT Cut Performance, if either metric is below standard, the entire critical measure is treated as below standard.

Table F-1-2
Allocation of Dollars for Critical Measures
Measures with 95% Standards ²

<u>% Performance</u>		<u>Performance</u>	<u>Increment</u>	<u>Dollars</u>
<u>From</u>	<u>To</u>	<u>Score</u>		
	≥ 95.0	0	0%	\$0
< 95.0	≥ 94.5	-1.0	50%	\$195,345
< 94.5	≥ 94.0	-1.1	55%	\$214,880
< 94.0	≥ 93.5	-1.2	60%	\$234,414
< 93.5	≥ 93.0	-1.3	65%	\$253,949
< 93.0	≥ 92.5	-1.4	70%	\$273,483
< 92.5	≥ 92.0	-1.5	75%	\$293,018
< 92.0	≥ 91.5	-1.6	80%	\$312,552
< 91.5	≥ 91.0	-1.7	85%	\$332,087
< 91.0	≥ 90.5	-1.8	90%	\$351,621
< 90.5	≥ 90.0	-1.9	95%	\$371,156
< 90.0		-2.0	100%	\$390,690

- 2. The aggregate performance score would be used to determine the amount of Bill Credits available for CLECs who received unsatisfactory performance.**

Pursuant to table F-1-1, \$195,345 would be available if the aggregate z-score equaled -0.823 and the performance score equaled -1³

- 3. Determine which CLECs qualify for the market adjustment.**

For measures where the statistical score is used, the cutoff point for qualification is Verizon-MA's score on the critical measure +/- one sampling error (based upon the Verizon-MA sampling error). Each CLEC's performance is compared to the cutoff point. Performance equal to or less than the cutoff qualifies for Bill Credits. For example, if Verizon-MA's performance score was .13 and the sampling error was .03, all CLECs with scores equal to or greater than .16 would qualify.

² For Performance Measures with other % standards, the range of performance will be similarly distributed in 10 even increments.

³ When calculating a market adjustment for metrics that use absolute standards (generally a 95% standard) all CLECs at the -1 level or less would qualify. The calculation of the dollars is similar to the z-score method.

4. Calculate the individual market adjustments for qualified CLECs.

- a. Determine each CLEC's allocated weight. Multiply the CLEC's score on the measure by the volume of its service to be credited.
- b. Determine each CLEC's weighted share. Aggregate the amounts from step "a" and divide each CLECs share by this total to determine each CLEC's weighted share.
- c. Determine each CLEC's dollar share. Multiply the CLEC's weighted share by the total amount available for market adjustment.

B. The following steps will be taken to determine whether any CLECs would be entitled to Bill Credits pursuant to the Individual Rule, i.e., for CLECs who receive a performance score ≤ -1 for two consecutive months:

1. Determine if any CLECs qualify for Bill Credit Adjustment. CLECs qualify for a Bill Credit if they received a final score equal to or less than $-.8225$ for z and t scores or equal to or less than -1 for absolute scores on any of the measures included in the critical measurements for the applicable month.
2. Determine each CLECs Bill Credit Adjustment base. The CLECs individual z or t or performance score is used as a starting point to determine the monthly amount available for bill credits to that CLEC.
3. Calculate Bill Credit Adjustment to apply to the CLECs impacted. The monthly dollars available to the CLEC are converted to a rate assuming that $1/3$ of the market would receive a Z or t-score of $-.8225$ or less or a performance score of -1 or less. This rate is multiplied by the CLEC's volume (*e.g.*, lines in services) to determine the amount to be credit to the CLEC for that critical measure.

APPENDIX G

Credit to Industry at this Performance

UNE

Month

Perf.

Watd.

Diff.	Score	Wgt.
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[illegible]

PO Pre-Ordering

BA C|FC

1-01	Customer Service Record		
1-02	Due Date Availability		
1-03	Address Validation		
1-04	Product and Service Availability		
1-05	Telephone Number Availability and Reservation		
1-06	Facility Availability (Loop Qualification)		
2-02	OSS Interface Availability - Prime		
3-02	% Answered within 30 Seconds - Ordering		
3-04	% Answered within 30 Seconds - Repair		

OR Ordering

1-02	% On Time LSRC - Flow Through - POTS - 2hrs	
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through)-POTS	
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through)-Specials	
1-04	% OT LSRC<10 Lines (Elec.-No Flow Through)-Complex	
1-06	% On Time LSRC >=10 Lines (Electronic) - POTS	
1-06	% On Time LSRC >=10 Lines (Electronic) - Specials	
1-06	% On Time LSRC >=10 Lines (Electronic) - Complex	
2-02	% On Time LSR Reject - Flow Through - POTS	
2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through)-POTS	
2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through)-Specials	
2-04	% OT LSR Rej.<10 lines (Elec.-No Flow Through)-Complex	
2-06	% On Time LSR Reject >= 10 Lines (Electronic) - POTS	
2-06	% On Time LSR Reject >= 10 Lines (Electronic) - Specials	
2-06	% On Time LSR Reject >= 10 Lines (Electronic) - Complex	
4-09	% SOP to Bill Completion Sent w/in 3 Business Days	
5-03	% Flow Through - Achieved - POTS & Specials	
6-03	% OT Accuracy LSRC	

Observations	BA Stnd. Sampling
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PR Provisioning

BA	CLEC
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BA	CLEC	Deviation	Error	Z-Score
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Performance		2017	2018	2019	2020	2021	2022
3-08	% Completed w/in 5 Days (1-5 lines-No Dispatch)-UNE-P/Other						
3-09	% Completed w/in 5 Days (1-5 lines-Dispatch)-UNE-P/Other						
4-01	% Missed Appointment - BA - Total - Specials						
4-01	% Missed Appointment - BA - Total - EEL						
4-01	% Missed Appointment - BA - Total - IOF						
4-02	Average Delay Days - Total - POTS						
4-02	Average Delay Days - Total - Specials						
4-02	Average Delay Days - Total - Complex						
4-04	% Missed Appointment - BA - Dispatch - Platform						
4-04	% Missed Appointment - BA - Dispatch - New Loop						
4-04	% Missed Appointment - BA - Dispatch - Complex						
4-05	% Missed Appointment- BA - No Dispatch - Platform						
4-05	% Missed Appointment- BA - No Dispatch - Complex						
4-06	% On Time Performance - Hot Cut						
5-01	% Missed Appointment - Facilities - POTS						
5-01	% Missed Appointment - Facilities - Specials						
5-02	% Orders Held for Facilities > 15 days - POTS						
5-02	% Orders Held for Facilities > 15 days - Specials						
6-01	% Installation Troubles within 30 days - POTS Other						
6-01	% Installation Troubles within 30 days - Specials						
6-02	% Installation Troubles within 7 days - Loops						

MR Maintenance & Repair

Diff.

1-01	Average Response Time - Create Trouble		
1-03	Average Response Time - Modify Trouble		
1-04	Average Response Time - Request Cancellation of Trouble		
1-06	Average Response Time - Test Trouble (POTS only)		

Z-Score

2-01	Network Trouble Report Rate - Specials								
2-02	Network Trouble Report Rate - Loop (POTS)								
3-01	% Missed Repair Appointments - Loop								
3-02	% Missed Repair Appointments - Central Office								
4-01	Mean Time to Repair - Specials								
4-02	Mean Time to Repair - Loop Trouble								
4-03	Mean Time to Repair - CO Trouble								
4-08	% Out of Service > 24 Hours - POTS								
4-08	% Out of Service > 24 Hours - Specials								
5-01	% Repeat Reports w/in 30 days - POTS								
5-01	% Repeat Reports w/in 30 days - Specials								

BI **Billing**

1-01	% DUF in 4 Business Days	
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Totals

Credit to Industry at this Performance

Bell Atlantic - Massachusetts

271 Backslide Report

Month

INTERCONNECTION

<u>OR</u>	Ordering	CLEC	Obs.	Perf. Score	Wgt.	Wgted. Score
1-12	% On Time Firm Order Confirmations					
1-13	% On Time Design Layout Record					
2-12	% On Time Trunk ASR Reject					

<u>PR</u>	Provisioning	BA	BA	CLEC	Observations	BA Standard Deviation	Sampling Error	Z-Score	Perf. Score	Wgt.	Wgted. Score
4-01	% Missed Appointment - BA - Total										
4-02	Average Delay Days - Total										
4-07	% On Time Performance - LNP only										
5-01	% Missed Appointment - Facilities										
5-02	% Orders Held for Facilities > 15 Days										
6-01	% Installation Troubles w/in 30 Days										

<u>MR</u>	Maintenance & Repair	BA	BA	CLEC	Observations	BA Standard Deviation	Sampling Error	Z-Score	Perf. Score	Wgt.	Wgted. Score
4-01	Mean Time to Repair - Total										
5-01	% Repeat Reports w/in 30 Days										

<u>NP</u>	Network Performance	BA	BA	CLEC	Observations	BA Standard Deviation	Sampling Error	Z-Score	Perf. Score	Wgt.	Wgted. Score
1-03	# of Final Trunk Groups Blocked 2 Months										
1-04	# of Final Trunk Groups Blocked 3 Months										
Totals											

Credit to Industry at this Performance

Collocation

<u>NP</u>	Network Performance	CLEC	Obs.	Perf. Score	Wgt.	Wgted. Score
2-01	% OT Response to Request for Physical Collocation					
2-02	% OT Response to Request for Virtual Collocation					
2-05	% On Time - Physical Location					
2-06	% On Time - Virtual Location					
2-07	Average Delay Days - Physical					
2-08	Average Delay Days - Virtual					
Totals						

Credit to Industry at this Performance

Special Provision - UNE Ordering Month

	% On Time	Observations	Market Adj.
OR-1-04-3100	% OT LSRC<10 Lines (Elec.-No Flow Through)-POTS		
OR-1-06-3320	% On Time LSRC >=10 Lines (Electronic) - POTS		
OR-2-04-3320	% OT LSR Rej.<10 lines (Elec.-No Flow Through)-POTS		
OR-2-06-3320	% On Time LSR Reject >= 10 Lines (Elec.) - POTS		

Total Market Adj.

* For allocation, any UNE Ordering market adjustment is combined with the MOE UNE market adjustment allocation.

Special Provision - UNE Flow Through

PR-5-01-3000 % Flow Through - Total - POTS & Specials				OR-5-03-3112 % Flow Through - Achieved - POTS & Specials			
Month	%	Observations	Flow-thru	Month	%	Observations	Flow-thru
		Gross #				Gross #	
Overall				Overall			

Market Adjustment *

* For allocation, any Flow Through market adjustment is combined with the MOE UNE market adjustment allocation.

Special Provision - Hot Cut - Loop Performance

	% On Time	Observations	% On Time	Observations
	Current Mo.		Prior Month	
PR-9-01-3520	% On Time Performance - Hot Cut			
	%Troubles			
PR-6-02-3520	% Installation Troubles within 7 days - Hot Cut			

Tier I (2 mo) Tier II (1 mo) Total

Market Adjustment *

* For allocation purposes, any Hot Cut market adjustment is combined with the Critical measure market adjustment allocation.

Bell Atlantic - Massachusetts
271 Backslide Market Adjustment Summary
Month

Sheet I

Weighted
Score Market
Adjustment

MODE OF ENTRY

Resale

Unbundled Network Elements

Trunks

Collocation

Mode of Entry Total

CRITICAL MEASURES

1 Response Time OSS Interface

2 OSS Interface Availability - Prime

3 % Accuracy LSRC

4a % Missed Appointment - BA - Total - EEL

4b % Missed Appointment - BA - Complex

4c % Missed Appointment

5 % Missed Appt. - BA - No dispatch - Platform

6 % On Time Performance - Hot Cut

7 % On Time Performance - LNP

8 % Repeat Reports within 30 Days

9 Mean Time To Repair

10 Final Trunk Group Blocked

11 Collocation

Critical Measure Total

SPECIAL PROVISIONS

UNE Ordering

UNE Flow Through

UNE Hot Cut Loop

Special Provision Total

Grand Total

271 Backslide Market Adjustment Summary - CLEC A

Month	
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MODE OF ENTRY	Weighted Score	Market Adjustment	Number of Units in Market	Market Adjust. Rate	Number of Units for CLECA	Total Market Adjustmunt for CLEC A
Resale						
Unbundled Network Elements						
Trunks						
Collocation						

TOTAL MOE \$ to CLEC A	
-------------------------------	--

CRITICAL MEASURES

- | | |
|----|--|
| 1 | Response Time OSS Interface |
| 2 | OSS Interface Availability - Prime |
| 3 | % Accuracy LSRC |
| 4a | % Missed Appointment - BA - Total - EEL |
| 4b | % Missed Appointment - BA - Complex |
| 4c | % Missed Appointment |
| 5 | % Missed Appt. - BA - No dispatch - Platform |
| 6 | % On Time Performance - Hot Cut |
| 7 | % On Time Performance - LNP |
| 8 | % Repeat Reports within 30 Days |
| 9 | Mean Time To Repair |
| 10 | Final Trunk Group Blocked |
| 11 | Collocation |

TOTAL Critical Measure \$ to CLEC A		
--	--	--

Note: For Critical Measure Rate Calculation - Assume entire industry missed.

APPENDIX H

Special Provisions

UNE Ordering Performance Measures:

Verizon-MA will provide an additional \$1,083,333 in monthly bill credits for UNE Order Confirmation Performance based on four POTS metrics included in the MOE category. If on-time performance falls below 90% for any month, a credit of \$270,833 for each metric missing the standard will be distributed like the bill credits under Critical Measures. Funding for these credits will be taken from funds that are unused in 6 previous months or from the current month. No new funds are available. The metrics and standards are as follows:

Metric #	POTS Electronically Submitted	Threshold
OR-1-04	% On Time LSRC < 10 Lines	< 90%
OR-1-06	% On Time LSRC ≥ 10 Lines	< 90%
OR-2-04	% On Time Reject < 10 Lines	< 90%
OR-2-06	% On Time Reject ≥ 10 Lines	< 90%

Flow Through:

An additional \$5.4 Million per year is available for flow through performance. Two performance measures for UNE from the Carrier to Carrier Performance Guidelines will be used to measure performance with the performance scores set forth below.

Metric #		Threshold
OR-5-01	% Flow Through – Total – UNE	≥ 80%
OR-5-03	% Flow Through – Achieved – UNE	≥ 95%

For each measure, the UNE scores will be combined and reviewed on a quarterly basis. If the combined score meets either target, no additional credits are due. If the combined score meets neither metric target for that quarter, then \$1,350,000 will be credited to all CLECs purchasing UNEs based on the number of lines in service. Lines in service will equal: UNE-P, UNE Loops, IOF, and EEL Loops. Performance will be measured for the first time under this measure upon Verizon-MA's entry into the InterLATA market. The prior three months will be examined to determine if bill credits are due.

The following table demonstrates the calculation of quarterly flow through performance:

Quarterly Flow Through Performance:

	Month 1	Month 2	Month 3	Quarter Total
Total Orders that Flow Through UNE	15000	18000	17000	50000
Total Orders Processed UNE	25000	21000	22000	68000
Total % Flow Through - UNE Combined for Quarter:				73.5%
Total Orders that Flow Through UNE	15000	18000	17000	50000
Total Orders Designed to Flow Through: UNE	18000	19000	18000	55000
Total % Achieved Flow Through - UNE Combined for Quarter:				90.9%

In this example, neither metric met the performance threshold, therefore, \$1,350,000 would have been credited to all CLECs purchasing UNEs.

Additional Hot Cut Loop Performance Measures:

An additional \$13 Million per year is available for Hot Cut Loop performance. This measure will be composed of two performance metrics: PR-4-06 – “% On Time Hot Cut Loop” and PR-6-01 – “% Installation Troubles within 7 Days – Hot Cut Loop.”¹ If either one of these thresholds is missed, additional bill credits will be distributed to the CLECs.

This measure has two tiers of performance standards. Tier I will be applied to a two month scenario, and Tier II will be applied to a one month scenario. The Tier I threshold is measured based

¹ These two measures are also included in the Critical Measurements method, and additional bill credits may be due if Verizon-MA does not satisfy that Critical Measure.

on two consecutive months of performance, while the Tier II threshold is measured based on an individual month's performance. The performance thresholds are contained in the table below:

Metric #		Tier I Threshold	Tier II
PR-4-06	% On Time Hot Cut Loop ²	< 90%	< 85%
PR-6-01	% Installation Troubles within 7 Days – Hot Cut Loop	≥ 3.00%	≥ 4.00%

Under Tier I, if Verizon-MA does not satisfy the above standards for two consecutive months, it will distribute \$541,666 million to the affected CLECs. Under Tier II, if Verizon-MA does not satisfy the above standards for a single month, it will distribute \$1,083,333 million to the affected CLECs. Below is an example of how this measure would work.

Example:

Metric #		Performance For Month 1	Performance for Month 2	Performance for Month 3	Performance for Month 4
PR-4-06	% On Time Hot Cut Loop	84%	91%	91%	91%
PR-6-01	% Installation Troubles within 7 Days – Hot Cut Loop	2%	3.5%	2%	3.5%
	Credit for the Month	\$1,083,333	\$541,666	\$0	\$0

In month 1, Verizon-MA did not satisfy the more stringent requirements of Tier II and \$1,083,333 in bill credits would be due.

In month 2, Verizon-MA satisfied the performance standard under Tier II, but not the less severe standard under Tier I. Bill credits would be due, however, because Verizon-MA failed to meet the Tier I standard two months in a row. (Month 1 counts against Verizon-MA.)

In month 3 both the Tier I and II standards were met, Verizon-MA would owe nothing.

In month 4, the Tier I performance standard was not met, but no bill credits would be due since Tier I requires Verizon-MA to fail these performance standards two months in a row. Verizon-MA service in

month 3 was satisfactory. Month 5 would determine whether bill credits would be due under either Tier I or Tier II.

²

% On Time – Hot Cut Loop performance will be adjusted such that any missed appointment for customer reasons – due to late FOC will be counted as a miss.

APPENDIX I

CHANGE CONTROL ASSURANCE PLAN

VERIZON - MASSACHUSETTS

OCTOBER 2000

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APPENDIX I-A – Change Control Measures

I. INTRODUCTION

To ensure that Verizon Massachusetts (“Verizon-MA”), will execute the Change Control process in an expeditious and non-discriminatory manner, Verizon-MA will undertake the actions set forth in this Change Control Assurance Plan (the “C.C.A.P.”) after entry into the long distance market pursuant to Section 271 of the Telecommunications Act of 1996. A total of \$13.2 million in bill credits will be at risk to CLECs if Verizon-MA provides unsatisfactory service for the four measures in this Plan.

II. THE CHANGE CONTROL MEASURES AND BILL CREDITS

The following measures are included in this Plan:

1. PO-4-01: % Change Management Notices Sent on Time;
2. PO-4-03: Change Management Notice Delay 8 plus Days;
3. PO-6-01: % Software Validation; and
4. PO-7-04: Delay Hours - Failed/Rejected Test Transactions - No

Workaround.

Attached hereto as Appendix A is a chart that provides the standards that will be applied to each of the above measures and the total amount of bill credits associated with each standard. If a performance measure is missed according to its standards, bill credits will be paid to all CLECs purchasing Unbundled Network Elements (“UNEs”) or resold services. CLECs will receive bill credits on a prorated basis of the total credit determined using Appendix A based on their lines in service. This Plan will use the same mechanisms set forth in the Performance Assurance Plan for determining “lines in service.” (*See P.A.P. Section II (C)(2)*)

Under this Change Control Assurance Plan, Verizon-MA will retain the right to withdraw any proposed software release prior to the item being put into final production. If Verizon-MA exercises this right, it will not be deemed to have violated the requirements set forth in PO-4-01,

PO-4-03, PO-6-01 or PO-7-04 and will not be subject to the payment of bill credits under those measures.

The initial amount of annual bill credits for all CLECs will be \$5.28 million under this Plan. If, however, the bill credits due to the CLECs under this Plan exceed \$5.28 million in any year,¹ an additional amount of \$7.92 million will be at risk from the bill credit amounts allocated to the Mode of Entry Categories in the Performance Assurance Plan. Thus, a total of \$13.2 million will be available for bill credits for the Change Control measures. Bill credit payments for Change Control measures will be given priority over bill credits for the MOE categories.

The Department will have the authority to reallocate the monthly distribution of bill credits between and among any provisions of the P.A.P. and the C.C.A.P. The Department will give the Company 15 days notice prior to the beginning of the month in which the reallocation will occur. Any reallocation will be done pursuant to Department order.

III. MONTHLY REPORTS

Each month Verizon-MA will issue a report on its performance on the above measures to each CLEC providing service in Massachusetts.² The reports will be CLEC specific and will indicate the scores on the measures, the aggregate amount of bill credits, if any, that Verizon-MA must provide pursuant to the standards set forth in Appendix I-A, and the specific amount of bill credits that will appear on the individual CLEC's bill. All CLECs with multiple bill accounts

¹ The "year" will be measured from the first day of Verizon-MA's entry into the interLATA market.

² Verizon-MA's performance on the other Change Control metrics will be reported in the monthly C2C reports.

must inform Verizon-MA as to which of their accounts should receive any bill credits for the Change Control measures.

IV. REVIEWS, UPDATES AND AUDITS

- Annual reviews and updates will occur under this Plan until the Department determines otherwise. However, Verizon-MA, after consulting with Staff, may at any time recommend to the Department modifications, additions, or deletions to the measures in this Plan or the bill credit allocations. CLECs and any other interested parties will be given an opportunity to provide comments on any recommendations. In addition, Staff will have the right from time to time, on 60-days notice to Verizon-MA, to conduct an audit of data reported in the monthly reports.³

V. EXCEPTION PROCESS

Verizon-MA will have the right to file a petition with the Department seeking to have the standards contained in Appendix I-A waived or modified either for future or past periods. The Department shall grant such a request if it determines that the application of one or more of the standards contained in Appendix I-A would not serve the public interest. The application of one or more parts of Appendix I-A would not serve the public interest if Verizon-MA could not, through any reasonable efforts, prevent results that do not satisfy the standards. Verizon-MA's petition must include all information that demonstrates how the measure was missed. It shall also include a recalculation of the measure with the challenged information excluded from the calculations. CLECs and other interested parties will be given an opportunity to respond to any Verizon-MA petition for an Exception. In the event the Department rules in Verizon-MA's

³ Unlike the most of the measures in the P.A.P., the recording of data for each of the measures in this Plan will be done manually.

favor, Verizon-MA will have the right to offset any paid bill credits against any future bill credits that may come due for either the Change Control measures or Performance Assurance Plan measures.

VI. TERM OF PLAN FOR THE CHANGE CONTROL PROCESS

The Change Control Assurance Plan will have the same term as the Performance Assurance Plan. It will remain in effect, as modified from time to time by the Department, until the Department rescinds the Performance Assurance Plan or develops a replacement mechanism.

VII. FULLY INTEGRATED DOCUMENT

The terms and provisions of this Plan are submitted in their entirety to the Department for approval. This Plan represents a fully integrated statement of the commitments Verizon-MA will undertake, including the payment of bill credits for unsatisfactory performance under the measures. It is not offered to the Department for approval on a piecemeal basis.

Change Control Performance Assurance Plan Measures

PO-4-01	% Change Management Notices Sent on Time			
	Performance Range (Notification and Confirmation for Types 3, 4 and 5 only)	≥ 95%	90 to 94.9%	< 90%
	Performance Credit	\$0	\$132,000	\$264,000
PO-4-03	Change Management Notice Delay 8 plus Days (Notification and Confirmation for Type 1, 2, 3, 4 and 5)			
	Performance Credit	\$13,200 per day		
PO-6-01	% Software Validation (See Note 1)			
	Performance Range	≤ 5%	5.1 to 10%	> 10%
	Performance Credit	\$0	\$52,800	\$528,000
PO-7-04	Delay Hours – Failed/Rejected Test Transactions – No Workaround (See Note 2)			
	Performance Credit	\$26,400 per day Per Release		

Note 1: Measured against releases pursuant to Change Notice Types 3, 4 and 5.

Note 2: PO-7-04 applies to failed Test Deck items executed by Verizon-MA in PO-6-01 and applies until all errors reported in PO-6-01 are fixed.